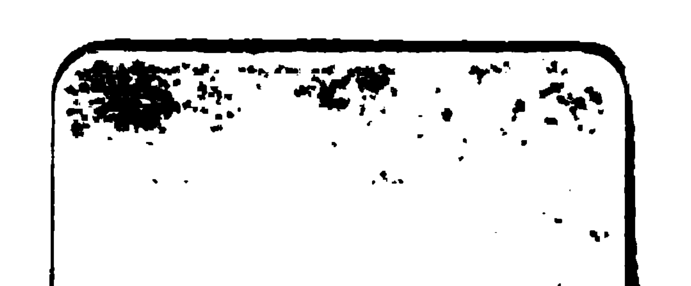










THE LIVES OF THE LORD CHANCELLORS AND KEEPERS OF THE GREAT SEAL OF ENGLAND,

FROM THE EARLIEST TIMES TILL THE REIGN OF KING GEORGE IV.

BY

JOHN LORD CAMPBELL, LL.D. F.R.S.E.

[THIRD SERIES,
FROM
THE BIRTH OF LORD CHANCELLOR LOUGHBOROUGH, IN 1733,
TO
THE DEATH OF LORD CHANCELLOR ELDON, IN 1838.]

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PREFACE

TO THE

THIRD SERIES OF THE LIVES OF THE CHANCELLORS.

I NOW complete my engagement with the public. I regret that the work should be extended to a Seventh Volume, but I could not further condense my narrative without injuring the symmetry of execution at which I have aimed. The Lives in this Series, although few in number, are intimately connected with the history of the country for a century, and it should be recollected that my latest Chancellor held the Great Seal nearly as long as Lord Shaftesbury, Lord Nottingham, Lord Guildford, Lord Jeffreys, Lord Commissioner Maynard, Lord Commissioner Trevor, and Lord Somers, put together — having been the principal artificer in the construction of five different administrations *, one of which, by his management, lasted fifteen years.

I have derived great assistance from the labours of preceding biographers, and my particular acknowledgments are due to Mr. Townsend † and Mr. Twiss. ‡ Their superiority I am the first to acknowledge, and instead of entering into rivalry with them I only venture on Lives which they have written so ably, because I feel myself bound to finish the plan which I had long ago announced, — because on many constitutional questions which we have to discuss my views are very different

* 1801, 1804, 1807, 1809, 1812.
† Lives of Twelve Eminent Judges, by W. C. Townsend, Esq.
‡ Public and Private Life of Lord Chancellor Eldon, by Horace Twiss, Esq.

from theirs,—and because I have been furnished with very important materials to which they had not access.

The whole of Lord Loughborough's papers, including his correspondence from the time when he left Scotland till the close of his career, have been submitted to me by the present Earl of Rosslyn, his representative, and it will be found that they throw great light upon the history of the reign of George III.,—particularly the interesting eras of the Regency in 1788,—the accession of the Alarmist Whigs to Mr. Pitt's government in 1792,—and the dissolution of that government in 1801.—I have received from the Earl of Auckland a large collection of letters to his father, the first Lord Auckland, from Lord Loughborough, beginning when he was making his way at the English bar, and continued long after he was Chancellor.—The present Lord Viscount Melville has likewise favoured me with some letters written by his father and Lord Melville in 1801 respecting Catholic emancipation — which will embitter the public regret that those great ministers, Mr. Pitt and Mr. Dundas, were so recklessly thwarted in their scheme for consolidating the Union with Ireland.—Respecting Lord Loughborough's early career, and his private history, I have obtained much interesting information from the kindness of the Right Honourable the Lord Justice Clerk of Scotland, the Very Reverend Dr. Lee, Principal of the University of Edinburgh, and my friend Mr. Gordon, Sheriff Depute of Aberdeenshire.

Several original letters of Lord Erskine have been communicated to me by different individuals with whom he was in the habit of corresponding,—and his son, the Right Honourable Thomas Erskine, has not only put me in possession of an exquisitely beautiful letter written by him when he was a boy at St. Andrew's, about to become a soldier or a sailor, and of all the note books compiled by him when he was a student of law, when he was at the bar, and when he was Chancellor,—together with other valuable papers which belonged

to him,— but has corrected for me various mistakes to be found in the common biographies of this illustrious advocate.

Even for the Life of Lord Eldon I have new materials of considerable value, in addition to the very copious "Selections from his Correspondence," given to the world by Mr. Twiss. Sir Robert Peel, placing a confidence in me, by which I feel most highly honoured and gratified, has allowed me to read and to use at my discretion all the letters which passed between him and Lord Eldon from the time when he himself became Secretary of State for the Home Department, in the beginning of the year 1822.*—In the Rosslyn MSS. I have found several very characteristic letters which passed between Lord Loughborough and Lord Eldon about the time when the Great Seal was transferred from the one to the other.— I have likewise been favoured with some original letters of Lord Eldon, by Mr. W. E. Surtees, his kinsman.—From the Records of the Northern Circuit, which have been thrown open to me, I have gathered many entertaining particulars of Jack Scott's *bonhomie* at the bar, and an account of the grand dinner given to him in London when he had become an Ex-Chancellor.— I ought likewise to return thanks to the Reverend Charles Stewart of Sunning Dale, for enabling me, from his boyish recollections, to present such an amiable and interesting picture of Lord Eldon in private life.

I can now only humbly express a hope that as there has been no relaxation of industry on my part, this last Series of the "Lives of the Chancellors" may be as indulgently received by the public as its predecessors.

I am only aware of one objection that has been seriously urged against me as a writer,— and this I confess I have not at all attempted to correct — that, forgetting the dignity

* It may be right that I should state, upon a matter of such delicacy, that all the letters and extracts which I selected from this correspondence as proper for publication, were shown to, and approved by, not only Sir Robert Peel, but the present Earl of Eldon.

of history, my style is sometimes too familiar and colloquial. If I err here it is on principle and by design. The felicity of my subject consists in the great variety of topics which it embraces. My endeavour has been to treat them all appropriately. If in analysing the philosophy of Bacon, or expounding the judgments of Hardwicke, or drawing the character of Clarendon, I have forgotten the gravity and severity of diction suitable to the ideas to be expressed, I acknowledge myself liable to the severest censure: but in my opinion the skilful biographer, when he has to narrate a ludicrous incident, will rather try to imitate the phrases of Mercutio than of Ancient Pistol —

"projicit ampullas et sesquipedalia verba."

I cannot yet understand why, in recording a jest in print, an author should be debarred from using the very language which he might with propriety adopt if he were telling it in good society by word of mouth.

And now, courteous reader, FAREWELL!

Hartrigge House, Roxburghshire,
October 1. 1847.

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LIVES

OF THE

LORD CHANCELLORS OF ENGLAND.

CHAPTER CLXII.

LIFE OF LORD LOUGHBOROUGH*, FROM HIS BIRTH TILL HIS CALL TO THE SCOTCH BAR.

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Conflicting feelings of the author in entering upon the composition of this memoir.

It is with conflicting feelings that I enter upon the composition of this memoir. I am glad to hail a man of brilliant talents and varied accomplishments,—whose early history carries me back to the institutions, manners, and distinguished literary characters of my native country,—whose subsequent career was connected with the most striking vicissitudes of the eventful times in which he lived,—who, having been a Ruling Elder in the Kirk of Scotland, presided over the Lords Spiritual and Temporal in the Parliament of the United Kingdom,—who, without any Scotsman as an example, in struggling for this elevation showed that it was possible to conquer his native dialect, and the prejudices against his countrymen,—who reminded the Scottish youth that, if they could no longer hope to rival the fame of Belhaven or Fletcher of Saltoun in their own land, and if

* I prefer the historical title of "Lord Loughborough," to that of "Earl of Rosslyn," conferred upon him after his retirement,—as I have written the Lives of "Lord Ellesmere" and of "Lord Bacon," not of "Lord Viscount Brackley" and of "Lord Viscount St. Alban's."

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the decrees of their supreme Court were to be subjected to revision in the British House of Lords, loftier objects of ambition were presented to them than to their forefathers, and that they might enjoy the power, and eclipse the fame, of a Somers or a Hardwicke. But it is painful and humiliating to be obliged to recollect, and to confess, that this harbinger of good fortune — of whom we might have been so proud—was almost entirely devoid of public principle, and in all his movements seems to have been actuated exclusively by a view to his own aggrandisement, — careless about any improvement of the laws and constitution,—contented with the present possession of high office, — and reckless of his reputation with posterity:

—— "Pudet hæc opprobria nobis
Et dici potuisse et non potuisse refelli."

Nevertheless, it is a consolation to me to think that I can relieve his memory from some portion of the obloquy which has been so unsparingly cast upon it. Surrendering him to severe censure as a politician, I must say, that his delinquencies were considerably exaggerated by his contemporaries, and that he has been hardly treated by those who, since his decease, have attempted to delineate his character. It will be found that he not only uniformly conformed to the manners and rules supposed to distinguish a "gentleman," but that in his changes of party he was never guilty of private treachery, and never attempted to traduce those whom he had deserted; — that before he became a "Wilkite," Lord Bute had withdrawn from public life; — that he had formed no engagements with Lord Chatham or Lord Rockingham, of which they could complain when he joined Lord North; — that to this leader he remained true till the "Coalition" associated him with the Whigs;—and that when he left the liberal party to grasp the Great Seal, he was accompanied by Mr. Burke, the Duke of Portland, Lord Spencer, and Lord Fitzwilliam. For his conduct during "the reign of terror" which followed, I am afraid that the prevailing dread of revolutionary doctrines can form little

palliation; but it will be refreshing to behold him, while still in possession of the Great Seal, the patron and protector of the author of the VINDICIÆ GALLICÆ against the narrow-minded persecution of the Benchers of Lincoln's Inn. Although his occupations after his fall were not very dignified, perhaps he was as harmlessly employed in trying at Windsor to cultivate the personal favour of the old king as if he had gone into hot opposition, or had coquetted with all parties in the House of Lords in the vain hope of recovering his office.—Proceeding with my task, however disagreeable it may sometimes be, I shall be cheered by reflecting that I might have had more discreditable disclosures to make, and heavier censures to inflict.

Loughborough's birth.

Alexander Wedderburn*, afterwards Lord Loughborough, Earl of Rosslyn, and Lord Chancellor of Great Britain, was born on the 13th of February in the year 1733, in East Lothian.† He was the eldest son of Peter Wedderburn, who was owner of a small estate in that county, called Chesterhall, and who exercised the profession of an advocate in Edinburgh with the reputation of a good lawyer, though without making a large professional income. Indeed at this time the *pabulum* for the Scotch bar was very scanty, so that an advocate was supposed to be in great practice who made 500*l.* sterling a-year, and the appointments of the "Senators of the College of Justice," or "Lords of Session," or "Judges of the Supreme Civil Court in Scotland" were not more considerable. The Wedderburns of Chesterhall, though not very wealthy, were of ancient descent, and had acted a prominent part. They were sprung from the Wedderburns of Wedderburn (or of that ilk), whose

* The name was often spelt with a final *e*; but I make no doubt that this is the most accurate as well as the modern orthography, the place from which the family name is taken being evidently the "burn," or brook, in which the "weathers" were washed—the Scotch mode of pronouncing it to this day being "Weatherburn."

† A valuable correspondent states that Wedderburn was born at Edinburgh, adding, that "all the Scotsmen who have ever held the Great Seal of England were natives of that city—Loughborough, Erskine, Brougham." I have in vain tried to find the register of his baptism. I think the evidence preponderates in favour of the rural birth-place.

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chief, Walter de Wedderburn, signed the Ragman Roll, and (I am ashamed to say) along with the chief of the Campbells, did homage to Edward I.—a disgrace which they redeemed at Bannockburn.

His ancestors.

In the year 1640, the Chancellor's ancestor, Mr. Alexander Wedderburn of Chesterhall, was deputed by the Scots, along with the Earl of Dunfermline, and Sir Patrick Hepburn, to settle several important points with the English parliament, shortly before the commencement of the civil war, and Sir Peter, his great-grandfather, was appointed by Charles II., first a commissioner of the royal revenue in Scotland, and afterwards a Judge of the Court of Session. * Peter, his father, was likewise elevated to the bench by George II. in July, 1756, under the title of Lord Chesterhall, †. but had a very short enjoyment of his dignity, dying while his hopeful son was still practising at the Scottish bar — although dreaming of conquests in Westminster Hall.

I have only picked up one anecdote of young Alexander's infant years. This bears some resemblance to an occurrence which befell Lord Somers about the same age, and was supposed to foretell that Chancellor's future greatness, but the omen of the Scottish boy might have been interpreted as marking him out for outrage and disgrace — from which he was barely to escape with his life. When he was between three and four years old, having provoked a fierce Turkey cock, by hallooing to him,—

When a boy nearly killed by a turkey cock.

> "Bubbly Jock, your wife is a witch,
> And she is going to be burnt with a barrel of pitch." ‡

The animal flew at the child, laid him flat on the ground, and seemed disposed to peck his eyes out, when he was saved

* See Branston and Haig's "Historical Account of the Senators of the College of Justice," pp. 394. 521.

† My readers are probably aware that these titles are enjoyed merely by courtesy with the office of Judge, without conferring any privileges of peerage.

‡ I know not the meaning of this nursery rhyme; but I have myself, when a child, often heard it applied to turkey cocks.

by his nurse, who rushed in to the rescue with a broom in her hand. A young lad, then acting in the family as assistant to the gardener, having witnessed this scene, and many years afterwards, when passing through London, having been carried into the Court of Chancery to see Lord Loughborough in all his glory, instead of being, as was expected, overwhelmed with admiration and awe,— after he had coolly contemplated him for some time, at length exclaimed, "Weel! Weel! he may be a great man noo, but I mind fine he was aince sair hadden doon by his mither's bubbly jock!"

His early education by his mother.

This lady, celebrated for the care which she took in the rearing of her children as well as of her poultry, was born an Ogilvie, was descended from the Earls of Airlie, and was possessed of a taste for literature — rare among the females of that day. While the "Laird" was absorbed in the business of the Parliament House at Edinburgh, or the farm at Chesterhall, she not only taught little Alec to read, but early inspired him with a love of books, so that he made wonderful progress in his studies, and displayed a precocity in his intellect as well as his acquirements which (as we shall see) excited the admiration of the literati of Scotland.

He is sent to school at Dalkeith.

When about six years old he was sent to a school at Dalkeith, then kept by Mr. James Barclay, a very able and successful teacher. Here he met the famous Harry Dundas, afterwards Lord Viscount Melville, and a friendship was established between them, which, in spite of political differences, lasted for life. I have not ascertained whether they were in the same form, or whether either of them was "Dux," or whether they were often subjected to the discipline of the "tawse,"* — in those times considered a necessary instrument for the inculcation of learning; but they are both said to have been remarkable boys, Dundas being distinguished for vigour and rough jocularity, and Wedderburn for dexterity and cunning. While here they acquired a considerable

* The Scottish *ferula*.

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knowledge of the Greek language, which was and is shamefully neglected at most Scotch grammar schools.

A.D. 1745.

At the university of Edinburgh.

In his fourteenth year, Wedderburn was removed to the University of Edinburgh. The rebellion of 1745 had suspended the scholastic pursuits of this learned body, Prince Charles being for a considerable time in possession of the city, while the Castle stood out for King George, and the professors, according to their inclinations, actively assisting the opposite sides.* But after the battle of Culloden lectures were resumed, and the studies of the place proceeded as peaceably as if a highland claymore had never been brandished in the Canongate, nor a cannon shot boomed from the battlements of the Castle. At this juncture, young Wedderburn began his academical career. He was matriculated on the 18th of March, 1746.

Our young collegian had no taste for mathematics, which Maclaurin had at this time rendered rather popular in Scotland; nor did he even show much of the metaphysical turn for which his countrymen were beginning to be distinguished; but he devoted himself sedulously to classics, political science, and modern belles-lettres. The university could not yet boast of such instructors as Robertson, Blair, Munro, Black, and Dugald Stewart; but a general ardour for study prevailed, and the development of genius, which soon after displayed itself, was quietly advancing. I have not been able to obtain any particulars of young Wedderburn's demeanour in the "Humanity Class," with which he began, or in any of the others during the "philosophy curriculum." The degrees of B. A. and M. A. had then fallen into desuetude at Edinburgh, and there were no public examinations or honours to excite emulation, or to reward proficiency. But much

* Sacred as well as civil functions gave way to arms; and Dr. Robertson, the historian, then minister of Gladsmuir, carried a musket as a private in the Edinburgh Volunteers. Such a proceeding, sanctioned by many precedents in the Old Testament, gives no offence to pious Presbyterians. I remember, when a French invasion was expected, my father, the Rev. Dr. George Campbell, one of the most venerated of the clergy of the Church of Scotland, while he preached with unction every Sabbath day, on week days was drilled in the ranks of the Cupar Volunteers.

more depends on the spirit of the time and of the place, than on positive institutions; and there can be no doubt that Wedderburn's mental cultivation and attainments (setting aside a minute skill in "longs and shorts") were superior to those of most young men of his years, who had all the advantages of Westminster or Eton, of Oxford or Cambridge. He was even then in daily intercourse, and on a footing of perfect equality, with several of the most distinguished literary characters whom Scotland has ever produced. Dr. Robertson, deeply engaged in preparing his history of Scotland, delighted to see him at Gladsmuir, and foretold his future eminence. When a child he had been noticed by Adam Smith — who, filling the Moral Philosophy chair at Glasgow, frequently corresponded with him.* But his greatest friend and admirer was David Hume, now Librarian to the Faculty of Advocates, and after the publication of his philosophical works, employed on his "Apology for the Stuarts." With such men to direct his studies, and to reward him by their praise, we can hardly wonder that our Edinburgh student worked with as much enthusiasm and effect as if he had had before his eyes the glory of a "double first," or of being at once "Senior Wrangler and Senior Medallist."

His early proficiency.

His intimacy with Robertson, Adam Smith, and David Hume.

Being of a *famille de robe*, an order long well known in Scotland as in France (of whom the Dundases, Hopes, and Wedderburns were distinguished branches), he was early destined to the bar, and in his seventeenth year he began his professional training — which did not consist, as in England,

Destined to the bar.

* Dugald Stewart, in his Life of Adam Smith, says: "In the year 1748 he fixed his residence in Edinburgh; and during that and the following years read lectures on Rhetoric and Belles-Lettres, under the patronage of Lord Kaimes. About this time, too, he contracted a friendship, which continued without interruption till his death, with "Mr. Alexander Wedderburn, now Lord Loughborough." Wedderburn, in 1748, was only fifteen; and as Smith went to Glasgow in 1751, this enduring friendship must have been settled on its foundation, — at the latest, when our hero was verging to eighteen. This does strike me as a remarkable proof of his early development. Perhaps no subsequent honour which he attained raises him more in our opinion than the consideration that before his manhood he was respected and cherished by Robertson, Smith, and Hume.

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in eating a certain number of dinners in the hall of an Inn of Court, but required that he should attend courses of lectures on the Roman civil law, and the different departments of municipal jurisprudence, and that he should undergo private and public examinations to test his progress and proficiency, before being authorised to practise as an advocate, or being qualified to preside as a judge. It had been under deliberation whether he should not, according to a custom which had long prevailed in Scotland, be sent to study the civil law at Leyden; but the reputation of this once famous university had been for some time declining, while that of Edinburgh was rising as a school of law, as well as of medicine,— and the advantage of studying under the laborious and accurate Erskine, afterwards the author of the "Institutes," was thought too considerable to be sacrificed.*

His study of the law.

Wedderburn now laid in the chief stock of law on which he traded for the rest of his days — for he never again studied this science systematically; and afterwards he was contented to make himself acquainted with particular questions as they arose *pro re nata* — aiming at the character rather of a dexterous practitioner than of a profound jurist.

While still a student of law at Edinburgh, he contemplates going to the English bar.

He felt within him very early not only the stings of ambition, but a consciousness of his own powers, and a sanguine anticipation of success if opportunity were afforded to him. It has been supposed, even by such diligent inquirers as Lord Brougham†, that Wedderburn had no thought of trying his fortune in England till his famous quarrel with Lockhart in the Parliament House; — whereas, it is quite certain that, while still a stripling — "from the time he could look about him, and compare himself with others,"‡ he he had become dissatisfied with the prospect of spending his life before Lords Ordinary and in the Inner House, without the hope of earning 1000*l*. a year at the bar or on the bench, and that he had listened with rapture to the almost incre-

* Boswell, the biographer, seems to have been the last Scotch advocate sent to study at Leyden.

† Statesmen, in Reign of George III., 1st series, p. 70.

‡ His own words.

dible stories which reached Edinburgh of the immense profits made by Mr. Yorke, before he had practised four years in Westminster Hall — of the power and riches of English Attorney and Solicitor Generals, and of the glory of the Chancellor, the highest civil dignitary in the kingdom.. He recollected that this officer was designated "Lord High Chancellor of GREAT BRITAIN," and there seemed to him no reason why the office should not be filled by a Scotsman as well as by an Englishman. It was true no countryman of his had yet thought of this distinction, and no one educated in Scotland had yet tried his luck at the English bar. Hamilton, an advocate of some eminence, the father of "Single-speech Hamilton," had gone up to reside in London immediately after the Union; but he had entirely confined his practice to Scotch appeals at the bar of the House of Lords. William Murray, born in Scotland, was now Attorney-General, with the highest offices of the law within his reach; but he had been "caught" when he was only three years old, and never revisiting his native country, he had been bred at Westminster and Christ Church.

He is carried to Marchmont to be shown to Hume Campbell, and pronounced a dunce.

Old Chesterhall, when consulted about this plan, thought it very visionary, but, to humour the lad, carried him across from East Lothian to the seat of the Earl of Marchmont, to show him to Hume Campbell, who was there on a visit, and who, from having some little business at the English bar, and from his brother's position, had a considerable reputation in Scotland. Lord Loughborough, when he had become a great man, gave the following account of this inspection:—"I took up at once a great contempt for the said Hume Campbell; and whether I had made myself purposely very disagreeable, or, disliking the whole notion of being so exhibited, only appeared very stupid, I do not know; but the result was, that Hume Campbell noted me a 'hopeless dunce,'— declared that it would be quite extravagant to send me to the English bar — urged my father not to think of sending me even to the Scotch bar, as I was quite unfit for the profession of the law, and advised him to ship me off to sea, or to try

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His revenge.

to get a commission for me in the army."* He added, "I had my revenge; for very early in business in London an opportunity of attacking Hume Campbell occurred to me, and I inflicted such a castigation upon him, that I drove him out of the Court of King's Bench, and forced him to seek relief in the Court of Chancery."

On his return to Edinburgh from Marchmont, Wedderburn's resolution to go to the English bar remained unshaken; and he devoted himself with more ardor to the pursuits which he thought might qualify him for it — particularly striving to acquire a style of sarcastic, cool, cutting invective. He translated Pascal's Letters twice over with his own hand,—while engaged in this task never losing sight of Hume Campbell.

Indulging in day-dreams of future greatness, he reached his twentieth year, when, being endowed with a large portion of wariness as well as of enthusiasm, he was somewhat appalled by the known and unknown perils of his scheme. The hatred of the Scots, which disgraced the English nation in the time of Lord Bute, had not burst forth; but he was conscious, that as yet he could not speak the language of the country where he meditated such achievements, and that beyond the *res angusta domi* there might be obstacles in his way which were wholly insurmountable. He exclaimed,

> "The wide, th' unbounded prospect lies before me;
> But shadows, clouds, and darkness rest upon it."

At last he resolved to take a journey to London, that he might himself view the promised land, and not only judge of

* I am indebted for this, and other interesting anecdotes of Wedderburn's career, to the present Lord Justice Clerk Hope, who had them from his uncle, the late Earl of Haddington. Lord Loughborough was fond of having young men of rank from his own country about him, and with Lord Haddington, who, from his powers of conversation and shrewd knowledge of the world, was a special favourite, he was often in the habit of dwelling upon his early life, and would speak of the manner in which his own character had contributed to his own rise, very much as a third person intimately acquainted with him might have done.

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its productions, but form some notion as to the practicability of his ever obtaining a share of them.*

A.D. 1753.

His first visit to London.

He communicated his intended journey to his friend David Hume, without fully confessing to him, or to any one else, his *arrière pensée*, and received from the philosopher the following letter of introduction to Dr. Clephane, a Scotch physician, settled in London, whose acquaintance Hume had made when they served together under General St. Clair in the expedition to the Isle of Rhè, and with whom he had continued to keep up a friendly correspondence: —

Letter of introduction from David Hume to Dr. Clephane.

"Dear Doctor, "Edinburgh, 6th March, 1753.

"This is delivered to you by my friend Mr. Wedderburn, who makes a jaunt to London, partly with a view to study, partly to entertainment. I thought I could not do him a better office, nor more suitable to both those purposes, than to recommend him to the friendship and acquaintance of a man of learning and conversation. He is young,

——'Mais dans les âmes bien nées
La vertue n'attend pas le nombre des années.'

It will be a great obligation both to him and me if you give him encouragement to see you frequently; and after that, I doubt not you will think that you owe me an obligation —

'Ha in giovenile corpo senile senno.'

But I will say no more of him, lest my letter fall into the same fault which may be remarked in his behaviour and conduct in life— the only fault which has been remarked in them,—that of promising so much that it will be difficult for him to support it. You will allow that he must have been guilty of some error of this kind, when I tell you that the man with whose friendship and company I have thought myself very much favoured, and whom I recommend to you as a friend and companion, is just twenty.

"I am, dear Doctor, your affectionate friend and servant,

"D. Hume."

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* "To clear this doubt, to know the world by sight,
To find if books or swains report it right,
He quits his cell; the pilgrim's staff he bore,
And fix'd the scallop in his hat before."

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His proceedings in London.

It was the end of March before Wedderburn reached London, and the circuits going on, he was disappointed in finding neither the courts of law nor the Court of Chancery sitting, and that almost all the eminent lawyers were out of town. However, through Dr. Clephane and others, to whom he had letters of introduction, he inquired into the course of legal education in England, the manner in which business was at first acquired at the bar, and the chances of professional advancement. Although presented to Mr. Attorney General Murray, he could not enter on such topics with so great a man; but he contrived to make acquaintance with some junior barristers on their return from the circuit, who initiated him in all the mysteries of the study and practice of the law in England. His courage rose. He was relieved from all apprehension of being obliged to submit to a tedious course of lectures and examinations before he could be called to the English bar. He was told that zealous friends might do a good deal for a young barrister at his first start: he thought that the whole of the Scotch interest might be exerted in his favour, there being no countryman to divide it with him; and instances were mentioned of the fortune of a young barrister having been made by a single lucky opportunity. In after life he likewise confessed that he felt increased confidence in comparing himself with some English counsellors who were succeeding well; for, though they could quote the classics glibly without any misgiving about a false quantity, he found that he had a much greater store of general information, and that he was infinitely better acquainted with Vinnius and Voet. The chief obstacle he dreaded was his defective knowledge and vicious pronunciation of the vernacular tongue. Although he could write English, as well as Latin, with tolerable purity, in common conversation he was often reduced to great embarrassment from not being sure that he knew how to express himself properly about the most trifling matters; and he could easily perceive that, notwithstanding the politeness of the Englishmen he met, they had great difficulty in commanding their gravity when he spoke in the native

accent of the Canongate, and still more when he rashly attempted to imitate them, and came out with the jargon called "High English."

His letter to his father, proposing that he should abandon the Scotch for the English bar.

Relying, however, on his own perseverance, energy, and good luck, he wrote a long letter to his father, pointing out his superior chance of success in Westminster Hall than in the Parliament House, and praying for an immediate and absolute change of destination. Chesterhall, himself still labouring at the Scotch Bar to little purpose, could not deny the truth of a good deal of Alec's reasoning, but was appalled at the thought of the adventurous youth being swallowed up by a troubled ocean on which no Scotsman had ever embarked before. His prudent resolve at last was to give his consent to the boy entering himself of an Inn of Court, and keeping terms, so that he might be qualified hereafter to be called to the English Bar if such a step should be deemed expedient, but on the express condition that he should at the same time complete his legal *curriculum* at Edinburgh, pass advocate there, and in the first instance seriously and earnestly try his fortune in his own country, where his prospects, though less splendid, would be more secure; at all events he would thus have two strings to his bow.

His father's conditional consent.

He is entered of the Inner Temple.

Wedderburn piously submitted to this compromise, and acted upon it with entire good faith. He immediately entered himself of the Inner Temple in the following words:— "Alexander Wedderburn, gentleman, son and heir-apparent of Peter Wedderburn of Edinburgh, Esquire—admitted 8th May, 1753."*

He remained in London a few weeks longer, and dined ten times in the Hall, by which Easter and Trinity Terms were kept, and he returned to Edinburgh before the termination of the summer session in the Parliament House. To please his father he immediately entered upon his "Civil Law Trials."

It has often been said that he "passed advocate," or was called to the Scotch Bar, while still under age, but this was impossible. On the 28th of February, 1750, the Lords of

* Books of the Inner Temple.

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He returns to Scotland, and enters on his trials to pass advocate.

Council and Session passed an act of *sederunt*, ordaining "that hereafter no person shall be admitted a member of the Faculty of Advocates but such as having been effectively tried upon his proficiency, not only in civil law, but also in the municipal law and practice of Scotland, shall be found duly qualified by the examinators appointed by the Faculty for that purpose; as also, the private examinators are hereby *prohibited and discharged to proceed to the examination of any intrant upon the civil law, unless he shall previously produce reasonable evidence to their satisfaction* THAT HE HAS ATTAINED THE AGE OF TWENTY YEARS COMPLETE; which proof or evidence shall by them be reported to the Dean and Faculty, if he shall be found duly qualified by his knowledge in the civil law. And the said Lords further statute and ordain, that no person shall be admitted to the trial of his knowledge of the municipal law and practice foresaid *until one full year* shall have elapsed after his examination upon the canon law."

Having passed his civil-law trials very creditably, Wedderburn devoted himself to Craig, M'Kenzie, and Bankton, comparing the Scotch with the English system of jurisprudence, through the medium of Blackstone's Commentaries recently published in London,—and when the proper time had arrived he was fully prepared for a compliance with all the prescribed requisitions prior to putting on the gown. In addition to his trials in the municipal law, he had now to write a Latin thesis on a juridical subject, and to defend it against all impugners. Our northern brethren, like ourselves of the English Inns of Court, had relaxed much the strictness of ancient discipline on such occasions. Fifteen public examinators (generally the fifteen junior members of the Bar), were still appointed by the Faculty to impugn every thesis, but they showed no pugnacity, however questionable might be the positions to be impugned.*

* Soon after, even the form of appointing impugners by the Faculty was dropped, and the usage since has been for each impugnee to choose some of his own friends at the bar to go through the farce of *impugning*. This is pretty much on a footing with the disputation in Lincoln's Inn beginning with the

A.D. 1754.

His Latin thesis.

In due time, before the appointed day, appeared on the College gates the following notice and challenge:—

"DISPUTATIO JURIDICA
Ad Tit. I. Lib. XIX. Pand.
De Actionibus empti venditi,
QUAM,
FAVENTE NUMINE
Ex auctoritate clarissimi ac consultissimi Viri,
D. ROBERTI DUNDAS,
Ab Arniston,
Inclytæ Facultatis juridicæ Decani,
Nec non
Ex ejusdem FACULTATIS consensu et decreto, pro
ADVOCATI munere consequendo,
publicæ disquisitioni subjicit,
ALEXANDE WEDDERBURN, *Auct. & Resp.*
Ad diem 29. Junii, 1754, hora 12 meridiana, loc. sol."

Then and there did he thus begin:—

"Quintus Scævola, Pontifex maximus, summam vim dicebat esse in iis arbitriis, in quibus adderetur EX FIDE BONA, fideique bonæ nomen existimabat manare latissimè, idque versari in *rebus emptis venditis:* in his magni esse judicis statuere, quid quemque cuique præstare oporteret. Hinc oritur disquisitio de actionibus empti venditi, quæ, ut uterque contrahentium, quod sibi invicem præstari oportet, judicis auctoritate, etiam ab invito, consequatur, comparatæ sunt." He then proceeded to lay down very learnedly the law of vendor and purchaser, fortifying all his positions by references to the *Corpus Juris Civilis,* and stating the points on which doctors differed. Thus:—"Neratius ait, venditorem in re tradenda debere præstare emptori, ut in lite de possessione potior sit; sed Julianus, *l.* 15. *Dig.*, nec videri traditum, si superior in possessione emptor futurus non sit, *l.* ii. § 13. *ff. h. t.* Si tamen emptor incertum quid, veluti jactum retis, emerit, venditor tantum tenetur præstare quantum in se est; si igitur retem jactaverit, etiamsi nihil ceperit, emptore pretium præstare necesse habebit, *l.* ii. § 18. *ff. h. t. in fin.* Si vero jactum retis emerit et jactare retem piscator noluerit, incertum ejus rei æstimandum, Celsus ait, *l.* xii. *ff. h. t.*" There is a tradition that the young impugners started some puzzling ob-

statement of the case "John Danvers seized in fee,"—and they stand equally in need of reform.

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A.D. 1754.

His disputation.

jections to him respecting the *cast of the net*—putting analogous questions touching the sale of the fees of an advocate during his first session, and whether the price would be due—"etiamsi nihil ceperit"—and the degree of diligence with which he would be required to ply in the Parliament House—and how far he would be held bound at the instance of the "emptor" to be civil to the solicitors? But the aspirant answered them triumphantly. He was accordingly in due form presented to the Fifteen as worthy to be made a member of the Faculty, and he was invested with the long robe, wearing a cocked hat over his powdered hair, — for barristers' wigs were not yet known beyond the Tweed.

The following is the entry of his call in the Records of the Faculty of Advocates: —

"Edinburgh, 29th June, 1754.

"Mr. Alexander Wedderburn, son to Mr. Peter Wedderburn, Advocate, was publicly examined upon Tit. I. Lib. XIX. Pand. 'De actionibus empti venditi,' and found qualified."

Dedication to Lord Aberdour

Under the *Imprimatur* of Sir Gilbert Elliot and Sir David Dalrymple on behalf of the Faculty, he printed and published his thesis with the following dedication: —

"Spectatissimo et ornatissimo
SCIOLTO CAROLO DOMINO de *Aberdour*
Jacobi Comitis de *Morton*
Filio dignissimo;
Felicem animi indolem
Omnibus Vitæ cultioris studiis
Sub optimi Patris auspiciis
colenti;
Disputationem hanc juridicam
Studiorum Primitias,
Amicitiæ a teneris annis excultæ
Monumentum,
D. D. C. Q.
ALEXANDER WEDDERBURN.

CHAPTER CLXIII.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL HE FINALLY LEFT SCOTLAND.

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1754–1757.

He continues three years at the Scotch bar.

For three whole years Wedderburn continued regularly and energetically to ply his profession in Scotland, except that each spring he slipped away for a few weeks to London, to eat dinners in the Inner Temple Hall, so that he might still have the English bar as a resource. In 1755 he was supposed to gain a great advantage by the elevation of his father to the bench, — from succeeding to the business of certain family clients, and from the expected favour of the court to the causes patronised by the son of a judge — a feeling much more prevalent in Scotland than in England. Each successive year he was appointed by the faculty one of the advocates for the poor — one of the fifteen public examiners and impugners — and one of the curators of the Advocates' Library.

His first brief.

The following is the account he gave of his maiden brief: — "Knowing the character of my countrymen at that time, I was at great pains to study and assume a very grave, solemn deportment for a young man, which my marked features, notwithstanding my small stature, would render more imposing. Men then wore in winter small muffs, and I flatter myself that as I paced to the Parliament House, no man of fifty could look more thoughtful or steady. My first client was a citizen whom I did not know. He called upon me in the course of the cause, and becoming familiar with him, I asked him, 'how he came to employ me?' The answer was, 'Why I had noticed you in the High-street going to Court* —

* To understand this thoroughly, the habits of Edinburgh in the middle of the last century — the groups assembled for conversation near the Cross, and the practice of shopkeepers to stand at their shop-doors, and to notice all who passed, saluting those whom they knew — should be kept in remembrance. I myself, when a boy, have witnessed a remnant of such habits — whereas now

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the most punctual of any as the clock struck nine, and you looked so grave and business-like, that I resolved from your appearance to have you for my advocate.'" He spoke with great satisfaction of the success resulting from the deportment he had assumed.

His eloquence in the General Assembly of the Church of Scotland.

Although he seems to have excited a very considerable sensation in his own country, while he remained there, I can find no trace of his eloquence in the Court of Session till the very close of his career there*, and my southern readers will be astonished to hear, that the great theatre for his rhetorical displays was the General Assembly of the Church of Scotland—not as counsel at their bar, but as a Ruling Elder, leading their deliberations on grave questions of heresy and church discipline.

At this time, in the absence of a Parliament, the General Assembly was considered a sort of national representative body, and many of the nobility and gentry sat in it as lay members, after being ordained elders — being deputies of presbyteries, royal burghs and universities. But next to the venerable fathers of the Kirk, the great speakers were young advocates, who contrived to be sent up as elders, — I am afraid, less with a view to further the objects of religion, than to gratify their own vanity, and to show how well qualified they were to manage causes before the Courts of Session and Justiciary.

He is ordained an elder, and returned for the burgh of Inverkeithing.

Wedderburn was of a Presbyterian family, and to be qualified for the General Assembly, immediately after he was called to the bar, at the age of twenty-one, he was privately ordained an elder of the parish in which his father resided in East Lothian, — and for the General Assembly, which was to meet in the month of May following, he was elected representative by the royal burgh of Inverkeithing.

Proceedings against David Hume and

Scotland was at this time in a state of extraordinary ferment from the philosophical writings of David Hume, and a

the great shopkeepers read the newspapers in a counting-house elegantly fitted up, and the lawyers drive to the Parliament House in their coaches.

* There is a bare mention of his name once or twice in the Faculty Reports, the last as counsel in Hunter v. Aitkin, 6th July, 1757. Morrison's Dictionary of Decisions, p. 3448.

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work of Henry Home, just made a judge under the title of Lord Kames, which was supposed to contain doctrines little less pernicious.* The zeal of the orthodox was quickened by a proceeding in England which they wished to outdo. About a year before there had been a presentment by the Grand Jury of the city and liberty of Westminster against Mallet for publishing the works of Lord Bolingbroke. In the north such offences were considered more properly within the cognizance of the ecclesiastical courts, and a certain Reverend Dr. Anderson, who published many pamphlets on the subject, resolved now to have the two great delinquents at the bar of the supreme sacred tribunal on earth, and to launch against them the terrors kept in store by those vested with the true power of the keys.

Lord Kames.

May, 1755.

I have not been able to find any record of the maiden speech of the Elder for Inverkeithing, or the part which he took in the proceedings of this assembly; but the probability is that he seconded the efforts of the more moderate and discreet friends of religion, who succeeded in suppressing the introduction of the names of any particular writers for public discussion, and who acquiesced in a general expression of opinion against prevailing infidelity and immorality.†

Anderson, however, was by no means satisfied, and as soon as the Assembly was dissolved, he published another pamphlet, which ran through many editions, attempting to prove

* "Nature and Obligations of Morality."

Act of the General Assembly against Infidelity, 28 May, 1755.

† The Assembly passed unanimously the following "Act against Infidelity and Immorality." — "The General Assembly being filled with the deepest concern on account of the prevalence of Infidelity and Immorality; the principles whereof have been to the disgrace of our age and nation, so openly avowed in several books published of late in this country, and which are but too well known amongst us; do therefore judge it proper and necessary for them at this time to express the utmost abhorrence of these impious and infidel principles, which are subversive of all religion, natural and revealed, and have such pernicious influence on life and morals. And they do earnestly recommend it to all the Ministers of this Church to exercise the vigilance and to exert the zeal which becomes their character, to preserve those under their charge from the contagion of these abominable tenets, and to stir up in them a solicitous concern to guard against them, and against the influence of those who are infected with them." It has been stated to me that "Wedderburn, for the sake of his friends, who were well known to be struck at, wished to move the previous question, but found that he was struggling against a stream which would have overwhelmed him — and said he was sure, while their names were not mentioned, they would consider the general censure *brutum fulmen*."

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A. D. 1756.

by texts of scripture, that it was the imperative duty of the Church, for the reformation of the wicked, for the protection of the unwary, and in the due exercise of the power vested in true believers constituting the visible Church, to cut off from its communion and to hand over to the Devil those who had violated their baptismal vow; and that a great national sin would be incurred unless personal proceedings were instituted and sternly carried on against the individuals who were now misleading so many, and who were little better than that Antichrist from whom their fathers, under the pious and unflinching Knox, had delivered the land.

Their alarm.

David Hume and Lord Kames became seriously alarmed. The former was then Keeper of the Advocates' Library and candidate for the chair of Moral Philosophy in the University of Edinburgh. The latter, clothed in ermine, was not yet warm in his seat as a judge. Sentence of the "greater excommunication" would not only have exposed them to a vast deal of social annoyance, — causing them to be regarded with horror by the godly and with ridicule by the profane, — but might have very seriously injured them in their worldly interests. Their main reliance was on the good sense of Dr. Robertson, and the influence he had established in the Church, but they were likewise solaced by the friendly zeal and enterprising activity of Wedderburn. Having, for some unexplained reason, quarrelled with Inverkeithing — to secure himself another seat in the General Assembly, our Elder contrived to make himself Provost of Dunfermline, and he acquired a complete ascendancy over the council of this burgh. He was unanimously elected their representative for the Assembly summoned to meet in May, 1756,— from which greater things were expected than had been achieved for the true faith since the Reformation. As the time approached, Anderson and his associates varied their plan of operations, and letting alone for the present Lord Kames, whose book was liable to the charge of heterodoxy rather than of infidelity, they resolved to bend all their efforts against David Hume, — to summon him to the bar, — to examine him *viva voce* respecting his writings and religious opinions, and if he proved contuma-

They are protected by Wedderburn.

cious, to make a great example by inflicting upon him the highest censures of the Church.

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A. D. 1756. Overture against Hume.

Accordingly, on the 28th of May, 1756, an overture or motion was made, that "The General Assembly, judging it their duty to do all in their power to check the growth and progress of infidelity; and considering that as infidel writings have begun of late years to be published in this nation, against which they have hitherto only testified in general, so there is one person, styling himself 'DAVID HUME, Esq.,' who hath arrived at such a degree of boldness, as publicly to avow himself the author of books containing the most rude and open attacks upon the glorious gospel of Christ, and principles evidently subversive even of natural religion and the foundations of morality, if not establishing direct atheism: therefore the Assembly appoint a Committee to inquire into the writings of this author, to call him before them, and prepare the matter for the next General Assembly."

Wedderburn's speech in the General Assembly for David Hume.

The speech of the mover was alarmingly well received; and it contained arguments which there was great difficulty in answering without being subjected to the popular reproach of "latitudinarianism," or of "indifference about religion." Wedderburn (I hope and believe from sincere conviction, and at all events from prudence) would have been very sorry to have been supposed to share the speculative doubts of the individual to be defended; but knowing that he was to be supported by men of unsuspected orthodoxy and piety, warmed by the recollection of the kindness for which he might now make some return, and no doubt excited by the favourable opportunity of gaining distinction,—rose to move what amounted to the previous question,— very properly not venturing upon a direct negative. The following is a short sketch of his speech on this occasion. In reading it, we are surprised at the sarcasms on which he ventured, and it rather corroborates the opinion of his eloquence given to me by a venerable father of the Church, who still lives and recollects it.* "I trust, Moderator," said the youthful elder for Dun-

* The Very Reverend Principal Lee,—who writes, "Wedderburn was not a favourite speaker in the General Assembly. He was disliked for his occasional

fermline, "it is wholly unnecessary that I should follow the example of the reverend divine who has preceded me, by making any profession of zeal for the pure Presbyterian church established in this country. I say with him, 'peace be within her walls! prosperity within her bulwarks!' Our object is the same, and we can only differ as to the means by which that object is, under Providence, to be attained. Now, notwithstanding the headlong fervour I see prevailing in some quarters, and the impatient eagerness to crush Mr. Hume with the censures of the Church, I would humbly advise the venerable Assembly to dismiss the overture, and to trust to reason and scripture for the refutation of his errors. In the first place, let me very respectfully ask whether all who are now disposed to concur in this vote have read the writings to be condemned? Am I to believe that the holy presbyters, trusted with the care of souls of which they are to give an account, instead of preaching, praying, and catechising, have been giving up their days and their nights to Mr. Hume's 'Treatise on the Human Understanding,' or to his 'Essays on Miracles,' and on 'Cause and Effect?' — writings said to be so poisonous and so pernicious, — in neglect of the spiritual good of others, and possibly to the peril of their own principles. But suppose these wicked books to have been deliberately read by every member of this assembly, by how many of you have they been understood? And are you to defer coming to a decision till you are all agreed on their meaning, and are all of one mind upon the various abstruse questions which they discuss? Can you all tell us the difference between coincidence and causation? One Essay, very acrimoniously alluded to by the reverend mover of the overture, is on 'Liberty and Necessity;' but some have declared elsewhere that the views of the essayist thus reprobated are in entire harmony with the doctrines of Calvin and Knox on predestination and the eternal decrees of God — by which the fall of man was preordained before the

bursts of insolence. Of the lawyers in the Assembly by far the most pleasing and successful speaker was Mr. Andrew Pringle (afterwards Lord Alemore), whose flowing and dignified eloquence attracted universal admiration."

foundation of the world, and all those who are to perish everlastingly are under the doom of eternal reprobation. Such notions may be unphilosophical, and may be unscriptural, but when are you to come to a unanimous and satisfactory conclusion on the questions broached by your overture? You must have made up your own mind upon them before you call in Mr. Hume,—who may be better prepared than it may be convenient for some of you, to prove that they are not at variance with the standards of the true presbyterian faith. I would, with all possible respect, request you to recollect the procedure in another meeting of intelligences, with which I would venture to compare this venerable Assembly only for eloquence, and a deep theoretical knowledge of divine truth. When these casuists, though of more than mortal grasp of thought

> ——— 'reason'd high
> Of providence, fore-knowledge, will and fate,
> Fixed fate, free will, fore-knowledge absolute,
> They found no end, in wandering mazes lost.'

The opinions complained of, however erroneous, are of an abstract and metaphysical nature — not exciting the attention of the multitude — not influencing life or conduct; your spiritual censures should be reserved for a denial of the divine right of presbytery, or practical errors which lead to a violation of the ten commandments. What advantage do you really expect from the course which is proposed? Is there any chance of your convincing Mr. Hume, and of making him cry *peccavi?* Alas! I am afraid he has withstood the reasonings of the subtlest philosophers who have attempted to refute him; and you can hardly expect that a miracle should again be performed — one of your number being specially empowered to speak to him. Upon his proving contumacious you are resolved to punish, if you cannot reform him; and the awful sentence of the 'Greater Excommunication' is to be pronounced—by which he is to be excluded from the society of all Christians, and to be handed over to the evil one. But this is a sentence which the civil power now refuses to recognise, and which will be attended

with no temporal consequences. You may wish for the good of his soul to burn him as Calvin did Servetus; but you must be aware that, however desirable such a power may appear to the Church, you cannot touch a hair of his head, or even compel him against his will to do penance on the stool of repentance.* Are you sure that he may not be so hardened as to laugh at your anathemas, and even to rejoice in them as certainly increasing the circulation of his books and the spread of his opinions? If he is grave and sarcastic, may he not claim the right of private judgment for which your fathers have bled, and if you deny it to him, may he not call upon *you* to obey the mandates of the Roman Catholic Church, and again to keep company with that Lady of Babylon whom you hold in such abomination? But there is one other point, which being a lawyer, as well as a member of this venerable Assembly, I wish before I conclude to bring under your serious consideration; — where is your jurisdiction to proceed in this case? I admit your jurisdiction in spiritual matters over all the members of your church. But you assert that Mr. Hume is not even a Christian. Why are you to summon him before you more than any Jew or Mahometan who may happen to be travelling within your bounds? Your 'libel,' as we lawyers call it, is *ex facie* inept, irrelevant, and null, for it begins by alleging that the defender denies and disbelieves Christianity, and then it seeks to proceed against him and to punish him as a Christian. Your charge must be true or false. If it be false, it is to be rejected as contrary to truth and justice; and if it be true, the party charged is unfortunately one of those who in the language of the Bible are '*without*' and consequently are not proper objects of Christian discipline. For these reasons I move 'that while all the members of the General Assembly have a just abhorrence of any doctrines or principles tending to infidelity or to the prejudice of our holy religion, yet they drop the

* This form, being often occupied by young ladies who become mothers without being wives, and are rebuked from it in the face of the congregation, is usually called "the *Cutty* stool," but was formerly the place where all delinquents sat when rebuked before the congregation.

overture anent Mr. David Hume, because it would not, in their judgment, minister to edification.'"

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Reply to Wedderburn.

Wedderburn was rather roughly handled by several clerical speakers who followed. They abstained from any insinuations against his own sincerity or orthodoxy, but maintained "that Mr. Hume's writings were a fit subject for the animadversion of the supreme court of the Church, as they were directly subversive of all religion, natural and revealed. It was limiting the power of God to suppose that an erring mortal might not be brought to a right frame of mind through the instrumentality of the punishments and prayers of the Church, and, at any rate, the reformation of the peccant individual was less to be regarded than the safety of others. No views of expediency should interfere with the plain precepts contained both in the Old and New Testament for the correction, by the instrumentality of the Church, of heresy and schism, including most especially a denial of the being of a God, or of the mission of his Son Jesus Christ. It was by no means so clear that excommunication would be treated so lightly by Mr. Hume. He had hitherto seemed desirous of enjoying the worldly advantages of being considered a Christian, after having forfeited all title to the name: his writings henceforth would be shunned by all in any danger of being corrupted by them; and, above all, it was most desirable that a broad line of separation should be drawn between him and all who professed to be Christians; for it was lamentable to think that, at present, ordained clergymen of the Church of Scotland were in the daily habit of associating with him, to the great scandal of all real Christians.* The objection on the question of jurisdiction was a quibble, and would go to put an end to such prosecutions, in the worst cases; for in proportion as the crime against religion was great, the power to punish it would be taken away. Let a man utterly deny and revile the Holy Scriptures, and the learned elder for Dunfermline would tell you, 'You have no power to censure him, for he is not a Christian.' Mr. Hume, who had been received at his birth into the Church of Christ, had never been formally excluded

* This was chiefly aimed at Dr. Robertson.

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from it, and had not only never renounced his baptism, but he continued to profess himself a Christian, and to talk of Christianity as '*our* most holy religion.'"*

Speech of Dr. Robertson.

Dr. Robertson (now fully established in the lead of the Church), according to his custom, concluded the debate with admirable tact and discretion; a great many ministers left the house to avoid the opprobrium of voting on either side; and on a division, the amendment to dismiss the overture was carried by a majority of 50 to 17.

Prosecution of Hume dropped.

This alarm, joined to the bad success of his History on its first appearance, caused such disgust in the mind of Mr. Hume, that Wedderburn and his other friends had great difficulty in dissuading him from putting in execution the plan of for ever renouncing his country, changing his name, and spending the remainder of his days in a remote provincial town in France.

Appearance of the tragedy of Douglas.

He was soon freed from all apprehension of further disturbance on account of his opinions, by the penal visitations of the Church being directed against other objects.† A few months after the dissolution of the last General Assembly there was brought out on the stage at Edinburgh the tragedy of DOUGLAS, written by the reverend John Home, minister of Athelstonford, — which threw all Scotland into a ferment. The great majority of the inhabitants were intoxicated with delight; for, not contented with the just belief that this was a most beautiful poem, and admirably adapted to scénic representation, they asserted that it was by far the finest drama that had ever appeared in the English language; that Shakespeare was to be eclipsed, and that Corneille and

* "Our most holy religion is founded on *Faith*, not on Reason."—*Essay on Miracles.*

† He had previously entertained the vain hope that his errors might be forgotten in the controversy then raging between the ancient and modern psalmody. Upon the maxim that "the Devil ought not to have all the good music," an attempt was now made to introduce into the service some of the best airs of a solemn character composed in modern times; but this was resisted as a dangerous innovation, and the faithful were as equally and as keenly divided upon it as upon the recent question of the Free Church. Not unfrequently, when the psalm had been "given out" and the singing was to begin, in contempt of the Precentor one half of the congregation would sing the appointed lines to an old tune, and the other to a new. But through the mediation of Dr. Blair, the church escaped this peril, and the threatened disruption did not take place.

Scandal excited in the church.

Racine were to be rivalled by a Scottish bard.* But great scandal was caused by the behaviour of many of the clergy upon this occasion. Not only the author, but several of his reverend brethren having cures in the city and neighbourhood, were in the theatre on the first representation of the piece; and at the successive repetitions of it ministers and elders from distant parts of Scotland did not scruple to attend and applaud. The old presbyterians, like the English puritans, had severely reprobated all theatrical exhibitions, and had strictly forbidden them to the laity as well as to the clergy. Many, therefore, considered the passion for the stage with which the nation seemed suddenly struck as "a delusion of Satan." †

Measures against the author and other clergymen in the General Assembly.

At the approach of the next General Assembly, it was resolved that the most energetic measures should be taken to stay the plague. Mr. Home himself would not face the storm, and withdrew from the jurisdiction of the Kirk by resigning the living of Athelstonford. Two or three clergymen, who had been identified as being present at the theatre, when brought before the Assembly acknowledged their offence — one of them urging in mitigation that "he had ensconced himself in a corner, and had hid his face with a handkerchief, to avoid scandal." They were let off with a severe reprimand from the Moderator. So far the proceedings were conducted with unanimity; but a very animated debate arose respecting measures for the future. It was proposed that the General Assembly should pass a new and stringent act against all members of the church, lay or clerical, who should be present at any theatrical exhibition. According to the forms of proceeding, the preliminary question put was, "whether there should be an overture anent the stage?"

Proposed act against stage representations.

Wedderburn's speech on this occasion.

Wedderburn, again representative for the burgh of Dunfermline, took the negative side, and, according to Lord Commissioner Adam, "made the best speech ever delivered

* It is curious that David Hume himself, from his dislike to the literature of the English, joined, or professed to join, in the general enthusiasm, — as he affected to consider "Douglas" superior to "Macbeth," and the "Epigoniad" equal to "Paradise Lost."

† Scots Magazine, 1756-7, MS. Journal of Lord Commissioner Adam.

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by him in his native country."* Unfortunately the conclusion of it only is preserved to us: "Be contented with the laws which your wise and pious ancestors have handed down to you for the conservation of discipline and morals. Already have you driven from your body its brightest ornament, who might have continued to inculcate the precepts of the gospel from the pulpit, as well as embodying them in character and action. Is it, indeed, forbidden to show us the kingdom of heaven by a parable? In all the sermons produced by the united genius of the Church of Scotland, I challenge you to produce any thing more pure in morality, or more touching in eloquence, than the exclamation of Lady Randolph —

> ——— 'Sincerity!
> Thou first of virtues! let no mortal leave
> Thy onward path, although the earth should gape,
> And from the gulph of hell destruction cry
> To take dissimulation's winding way.' †

It was carried "that there should be an overture," by 120 to 54. An act was then proposed subjecting to ecclesiastical censures all members of the Church, male and female, lay and clerical, who should be present at any theatrical exhibition; but this being strongly opposed by Wedderburn, and even by Dr. Robertson, although, under a vow he had made to his father, he himself had never entered the door of a playhouse, was rejected, and the following act was passed, entitled in the Acts of the General Assembly, "Recommend-

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* Lord Commissioner Adam's MS. Journal. This famous passage, however, of which the Scotch were so proud, was (probably for that reason) vilipended by Dr. Johnson, who, on its being quoted by old Mr. Sheridan, repeated with great emphasis the well-known description by Juvenal, of a man of inflexible virtue — "Esto bonus miles, tutor bonus," &c.; adding, "and after this comes Johnny Home, with his *earth gaping* and his destruction *crying*. Pooh!"[1]

† Preparatory to the meeting of this Assembly, Wedderburn had printed in the newspapers several songs and epigrams against the persecutors of Douglas and Carlyle, had published an ironical pamphlet under the title of "Reasons why the tragedy of Douglas should be burnt by the hands of the common hangman." It is confessed, however, by the author of the MAN OF FEELING, in his review of those times, that "the parodies and squibs in verse were, in

[1] Boswell's Tour, 376.

ation to Presbyteries to take care that none of the ministers of this Church attend the theatre:'

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"The General Assembly, considering how much the success of the Gospel depends on the regular and inoffensive behaviour of the ministers of this Church, do earnestly recommend to the several presbyteries to take such wise and effectual measures as may promote the spirit of our holy religion, and preserve the purity and decorum of the ministerial character; and that they take care that none of the ministers of this Church do, upon any occasion, attend the theatre."

Wedderburn a member of the Poker Club.

Before another General Assembly met, Wedderburn was transferred to a very different sphere. But we must attend him in some of the other scenes in which he drew public notice before he bade adieu to his native land. He is to be recorded as a distinguished member of the POKER CLUB. This had a political origin, although it soon became purely convivial. When the militia system was first established in England, there was a loud demand that it should be extended to Scotland; but the government was afraid to put arms into the hands of those who were still believed to be partisans of the house of Stuart. An association was formed to *stir up* the national discontent on account of this affront, and the members agreed to meet twice a week, on Tuesdays and Fridays, at a house called the *Diversorium*, in the Netherbow. To aid their deliberations they had a copious supply of excellent claret, which was drawn from the cask at the rate of eighteen-pence the quart. The grievance of the militia was forgotten, but a club was constituted under the name of the "POKER." Mr. Johnstone, afterwards Sir William Pultney, being elected *secretary*, and the famous advocate, Mr. Andrew Crosbie, *assassin*. Besides occasionally indulging in "high jinks," they had regular discussions on literary and scientific subjects, and they were beginning

general, not remarkable for their wit or pleasantry." It must be confessed that my ratiocinative and metaphysical countrymen have very little notion of any thing that approaches to raillery. Hume's Essays, in which he tried to imitate Addison in lightly commenting on manners, are wretchedly bad, were very properly excluded by him in subsequent editions, and have been most uncharitably reprinted by his recent biographers.

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to consider themselves equal to a preceding club in Edinburgh, which had carried on a philosophical correspondence with the celebrated Berkely, Bishop of Cloyne, upon the existence of matter. Although Wedderburn was not a very regular attendant, when he was present he contributed his full share of epigram, anecdote, criticism, and hilarity. But, alas! this club, while still in the freshness and vigour of youth, was suddenly extinguished by the tax laid on French wines. The members, though learned and witty, being poor, could not afford to have the price of their favourite beverage doubled at a blow, and they abhorred port, the beloved beverage of their southern fellow subjects.* To punish the government, they agreed, on the motion of Mr. Wedderburn, to dissolve the "Poker," and to form another society which should exist without consumption of any exciseable commodity — purely for mental improvement and gratification — defying the Chancellor of the Exchequer and all his works — to be called the "Select." The founder was Allan Ramsay, the painter, son of the author of the GENTLE SHEPHERD. The first meeting was held in the Advocates' Library, in the month of May, 1754, when, on the motion of Mr. Ramsay, Mr. Wedderburn, who had just completed his twenty-first year, was called to the chair. The original minutes of this meeting (by the special favour of the Faculty of Advocates) now lie before me. Mr. Alexander Wedderburn's name comes the fourth; and there are to be found in the list of original members then present —

Formation of the "Select Society."

Wedderburn the first præses.

Mr. DAVID HUME.
Mr. JOHN HOME, Minister of Athelstonford.
Mr. WILLIAM ROBERTSON, Minister of Gladsmuir.
Mr. HUGH BLAIR, Minister of Edinburgh.
Mr. ADAM SMITH, Professor at Glasgow.

* On this occasion were written the well-known lines by John Home: —

"Firm and erect the Caledonian stood,
Old was his mutton and his claret good:
Let him drink port, an English statesman cried;
He drank the poison, and his spirit died."

Mackenzie in his Life of the Author says, "As to the port wine, it is well known that Mr. Home held it in abhorrence. In his younger days, claret was the only wine drunk by gentlemen in Scotland."

Sir David Dalrymple, Advocate.
Dr. Alexander Monro.
Dr. John Hope.
Mr. Andrew Pringle, Advocate.
Mr. William Johnstone, Advocate.

Wedderburn must have obtained a wonderful ascendency, considering his years, to be elected præses at such a meeting. The great object of the members was to improve themselves in public speaking — a department of education which had hitherto been almost entirely neglected in Scotland. The members were at first limited to fifty, and all candidates were afterwards to be balloted for. The admission fee was only five shillings sterling. The meetings were to be every Wednesday evening, from November to August, in the Advocates' Library, between six and nine, when a subject given out by the præses of the preceding meeting was to be debated. "Every member might propose any subject of debate, except such as regard revealed religion, or which might give occasion to vent any principles of Jacobitism — to be received or rejected by a vote of the committee, and, if received, to be entered in a book to be kept for that purpose." The rule about speaking is perhaps the most curious, and it may afford hints for the regulation of other deliberative assemblies: "That every person may speak three times in a debate, and no oftener; the first time fifteen minutes, and ten minutes each of the other times — addressing himself to the member presiding. And if two or more stand up at the same time, the member presiding shall call upon him whom he first perceived rising — always giving preference to him who has not spoke, or not so frequently as the person or persons rising with him; unless any member rises to explain any thing said by him and misunderstood: for which purpose he shall be allowed two minutes and no more."

Rules of the Society.

The præses at the second meeting was Mr. Adam Smith, and he named as the next subject of debate, "Whether bounties on the exportation of corn be advantageous?" But when the debate came on he took no part in it himself, and both

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he and David Hume, though they attended frequently, always remained mute.

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Wedderburn was active both in speaking and in managing the affairs of the society. The following entry shows that he was very presumptuous, and that he was treated with great forbearance:—"7th Aug. 1754. The Committee having refused the following question—'Whether the law of Queen Joan of Naples, allowing licensed stews, would be of advantage to a nation,' Mr. Wedderburn, who proposed it, appealed to the Society, *and the determination of the appeal was delayed till next session.*"*

Questions debated.

I copy some of the questions which were debated:—"Whether the common practice in Scotland, of distributing money to the poor in their own homes, or the receiving the poor into workhouses and hospitals, be most advantageous?"—"Whether the establishment of Banks in Scotland has increased wealth?"—"Whether the bounty should be continued on the exportation of linen?"—"Whether the laws against bribery and corruption ought to be repealed?"—"Whether Brutus did well in killing Cæsar?"—"May a lawyer of ordinary parts become eminent in his profession?"—"Whether the Repenting Stool ought to be taken away?"—"Whether whisky ought to be laid under such restrictions as to render the use of it less frequent?"—"Whether the stage ought to be permitted in a well-regulated government?"—"Whether the place given to love and gallantry in modern tragedy be not unnatural?—"Whether ought we to prefer ancient or modern manners, with regard to the condition and treatment of women?" "Whether the difference in national character be chiefly owing to the nature of different climates, or to moral and political causes?" "Whether is an epic poem or a tragedy the most difficult and most perfect composition?" "Have the moderns done well in laying aside the use of a chorus in tragedy?" "Whether entails in perpetuity be for the good of families and the improvement of the country?" "Whether a university in a metropolis or in a remote town

* This was a gentle mode of deciding against him, whereas he ought to have been reprimanded for proposing the question and preferring the appeal.

be more proper for the training of youth?" "Whether an academy for painting set up in Scotland would deserve the encouragement of the public?" "Whether the right of primogeniture ought still to take place?" "Whether Courts of law ought to be allowed to take cognizance of Parliamentary privilege?" "Whether presentation by patrons, or election by the parishioners is the best mode of settling ministers?" "Whether an union with Ireland would be advantageous to Great Britain?" "Whether a Foundling Hospital erected at Edinburgh, and supported by a tax laid upon old bachelors, would tend to the prosperity of Scotland?" "Can a marriage be happy when the wife is of an understanding superior to that of the husband?" "Whether have mankind decreased in stature, strength, and virtue, during the last 3000 years?" "Whether doth a successful author feel most pleasure or pain?" "Whether the institution of slavery be advantageous to the free?" "Whether the practice of the ladies in painting their faces ought not to be prohibited by every wise government?" "Whether an excess of impudence or of modesty is most hurtful to a man in the commerce of the world?" "Whether in love we are happier in the passion we feel or in that we excite?" "Whether quackery is not more useful for obtaining success in the liberal professions than real merit?" "Whether the delays and expense attending judicial proceedings are not both necessary and useful to society?" "Whether divorce by mutual consent should be allowed?" "Ought there to be trial by jury in civil as well as criminal cases?"—These questions, more or less grave and well-chosen, may be curious, as they show the subjects which interested Scotland in the middle of the 18th century—the period of her greatest literary glory, and as the discussions upon them probably afforded many hints for the composition of Hume's "Political Essays," and of the "Wealth of Nations."

The Select Society soon became so popular that its members were trebled, and it contained many men of rank, who professed to be themselves philosophers and men of letters, or the patrons of philosophy and literature—such as Lord

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Kames, Lord Elibank, the Earl of Glasgow, the Duke of Hamilton, the Earl of Lauderdale, and the Earl of Bute. The speakers consisted chiefly of two classes — the ministers, and the lawyers. For lucid order, for sustained sweetness, and for solid information, Robertson was allowed to be decidedly first; while Wedderburn's sallies fixed the attention of the audience, and were sometimes found amusing by their extravagance. "The Select Society," says Lord Kames, "was instituted in 1754, and, though soon more numerous and promiscuous than its title warranted, included most of the men of letters at that time resident in Edinburgh and its vicinity." "The Society," says Dugald Stuart, "subsisted in vigour for six or seven years, and produced debates such as have not often been heard in modern assemblies, — debates where the dignity of the speakers was not lowered by the intrigues of policy and the intemperance of faction; and where the most splendid talents that have ever adorned this country were roused to their best exertions by the liberal and ennobling discussions of literature and philosophy. To this institution, while it lasted, Dr. Robertson contributed his most zealous support, seldom omitting an opportunity of taking a share in its business, and deriving from it an addition to his own fame; which may be easily conceived by those who are acquainted with his subsequent writings, or who have witnessed those powers of argument and illustration which in the Ecclesiastical Courts he afterwards employed so successfully on subjects not so susceptible of the embellishments of eloquence."* In the Select Society was likewise trained the

* The Reverend Dr. Carlyle, in an account of the "Select," subjoined in an appendix to Dugald Stuart's Life of Robertson, says: — "In this Society, which remained in vigour for six or seven years, Dr. Robertson made a conspicuous figure. By his means it was, and by the appearances made by a few of his brethren, that a new lustre was thrown on their order. From the Revolution (when the Church had been chiefly filled with incumbents that were ill educated), down to this period the clergy of the Established Church had always been considered in a subordinate light, and far inferior to the members of the other learned professions in knowledge and liberal views. But now, when compared together on this theatre for the exhibition of talents, they were found to be entitled to at least an equal share of praise; and having been long depressed, they were in compensation, as usual, raised full as high as they deserved." — *Life of Robertson.* It should be recollected, that they were at the same time equally distinguished for their biblical learning, for their piety,

defender of Clive — the assailant of Franklin — the future Chancellor of Great Britain.

Foolish plan for changing the spoken language of the country.

I am sorry, however, to be obliged to go on to relate that this respectable institution was finally covered with ridicule by an insane scheme which there is strong evidence to prove was entered into with the full concurrence of Robertson, Wedderburn, and its most distinguished members — the scheme being nothing less than at once to change the spoken language of the country.

The famous Charles Townshend, connected with Scotland by having married the Dowager Duchess of Buccleugh, had been admitted a member of the Select Society, and had spoken once with great brilliancy; but he never could be prevailed upon a second time to take part in the debate, and he threw out a number of gibes against the dialect in which the members expressed themselves,—doubting whether he could be intelligible to the audience,—hinting that he was often unable to follow their reasoning or fully to apprehend their rhetorical figures. He jestingly asked them "why they did not learn to speak as well as to write the English language?" and proposed that in the mean time an interpreter should be employed. Eager for the national honour and blind to the lurking malice of the *suthron wit*, they really thought it was in their power all of a sudden to rival Hardwicke, Chesterfield, and Pitt in oratory — by attending to the just power of the letters of the alphabet, and to pauses and cadences in their discourse.

The dialect then universally used in Scotland, by persons of all ages and all degrees, was certainly very barbarous. In early times there was little difference between the languages spoken in England and in the lowlands of Scotland. "Barber's Bruce" and the poems of our James I. bear a considerable resemblance to Chaucer, and are fully as intelligible to Englishmen of the present day. But the long succession of wars which followed the vain attempt of Edward I. to sub-

and for their unremitted attention to their pastoral duties. It would not become me to draw any comparison between them, and their successors of the present generation.

jugate Scotland, cut off all intercourse between the two countries, except by "raids" and "forays," and there was a growing divergence between their dialects. While Scotland retained a native court, there subsisted a standard to appeal to, and her Anglo-Saxon might perhaps be considered as classical and as polished as that of her rival; but after the union of the crowns, the lowland Scotch became a mere provincial *patois;* and the want of a proper medium of communication with the learned world, almost extinguished the literary genius of the people, which had burst forth with such lustre on the revival of letters. Arbuthnot, Mallet, Thomson, and Armstrong had first shown that Scotchmen might be taught to write English; and this accomplishment was very generally possessed by men of education of the existing generation. But still they conversed and they thought in the language which they had learned from their nurses, and which was spoken by the peasantry. This varied a good deal in different counties, but in all was uncouth and irregular. In its roots it bore a considerable resemblance to the English of the 18th century, but was very different in its inflections and idioms; and these resemblances and differences made the accomplishment of speaking English with purity and confidence more difficult to a Scotchman than to a Pole. Wedderburn, in his yearly trip to London to keep his terms in the Inner Temple, was more and more struck by the disadvantage under which he must in this respect labour, if he should ever really try his luck at the English bar; and he is said eagerly to have joined in the plan of lingual reform.

Sheridan's lectures on elocution.

It so happened, by a strange coincidence, that at this very time old Sheridan (the father of Richard Brinsley Sheridan) came to Edinburgh to deliver lectures on elocution, and, speaking with a strong Irish brogue, undertook to teach all the delicacies of English intonation. By such nonsense as this did he delude some Scotchmen of mature years:—

"The next progression of number is when the same note is repeated, but in such a way that one makes a more sensible impression on the ear than the other, by being more forcibly

struck, and therefore having a greater degree of loudness. As *tĭ-tùm* or *tùm-tĭ-tùm-tĭ*, or when two weak notes precede a more forcible one, as *tă-tă-tùm ;* or when they follow one, as *tùm-tĭ-tĭ, tùm-tĭ-tĭ.*"

The Select Society, seeing only the desirableness of the object, overlooked entirely the difficulties and impossibilities which opposed it, — such as the want of models of correct pronunciation for the great mass of the inhabitants — the rigidity of the organs of speech of adults — and the succession of persons from the lower orders, and from the remote provinces, who must have the accents as much as the features of their parents. Our grave divines, lawyers, and philosophers thought that the Scottish dialect was to be got rid of by a lecture, as they had known a cutaneous disease to be cured by ointment. They consequently resolved unanimously "That it would be of great advantage to this country, if a proper number of persons from England, duly qualified to instruct gentlemen in the knowledge of the English tongue, the manner of pronouncing it with purity, and the art of public speaking, were settled in Edinburgh; and if at the same time a proper number of masters from the same country, duly qualified for teaching children the reading of English, should open schools in Edinburgh for that purpose." With this view they determined that a fund should be raised by contribution, and that the contributors, together with the members of the Select Society, should take the name of "The Society for promoting the reading and speaking of the English Language in Scotland." A large body of directors was named, including Lord Auchinleck, Dr. Robertson, the Earl of Errol, the Earl of Eglinton, the Earl of Galloway, and the Earl of Elgin.

The members of the Select Society begin to speak English.

To benefit the nation by their example, they resolved that, from and after a given day, they themselves would all begin to speak English, according to the rules of grammar, and Sheridan's scale of progression — "*tĭ-tùm* or *tùm-tĭ-tùm-tĭ.*"

Failure of the attempt.

According to all accounts, never since the confusion of tongues at Babel was there such an exhibition. Few persevered in the attempt more than twenty-four hours, and it

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was soon discovered that they might as well have petitioned Parliament for a law forbidding red hair, or high cheek-bones, in any part of Scotland!

The ridicule of what they had attempted, even prevented them from going on with educational measures which might have been practicable and advantageous. "The Society for promoting the reading and speaking of the English Language in Scotland" did publish an advertisement in the "Edinburgh Courant and Caledonian Mercury," "that they had engaged Mr. Leigh, a person well qualified to teach the pronunciation of the English tongue with propriety and grace;" but here its labours ended. It immediataly fell to pieces, and no such national attempt at sudden reform has since been attempted, although individuals have from time to time exposed themselves to a little laughter, and have materially injured their success in public life, by violently attempting to get rid of their Scotch accent, and to speak "High English."*

Establishment of the original Edinburgh Review.

I have little more to relate of Wedderburn in his own country, except the share which he had in starting the original "EDINBURGH REVIEW." Unfortunately, there was no Sydney Smith to give us graphically the history of this publication, as of its more distinguished and prosperous successor, which appeared under the same name just half a

* It is said, in Ritchie's Life of David Hume, in which there is a lively account of these vagaries, that Dr. Robertson ever after adhered to his resolution to speak English, and was successful in his language although not in his intonation. But I have been told by my father, who enjoyed the familiarity and friendship of the historian, that "although he could write English better than any Englishmen, in conversation he spoke broad Scotch without any attempt at disguise." This corresponds with the compliment paid to him in England, that "he must not expect to speak as well as to write English better than the English;" as well as with the solution Boswell gives of his silence in society in London, that "he was afraid of falling into Scotticisms."

From my standing and long experience, perhaps I may be forgiven if I earnestly warn my young countrymen against "clipping the Queen's English." A Scotch accent being often found in company with birth, education, and talent, is not vulgar, and it will in no degree impair the effect of eloquence either in the House of Commons, or at the bar of the House of Lords. But they do no justice to their powers, when they hesitate about the pronunciation of a word; and after all, they are sure to make greater blunders than they avoid; for purity of accent to a Scotchman who continues domiciled in Scotland is utterly unattainable.

century later. Whether the projectors had any private bond of their association, such as—

"——tenui musam meditamur avena;" *

and whether they tried to find a public motto from some ancient author whom they had never read,—will for ever remain unknown to the world. † All that is certain is, that some of the most eminent members of the "Select Society" resolved, in the beginning of 1755, to establish a Review on a new plan, to be published half-yearly, to contain criticism, chiefly upon works printed in Scotland, but with notices of others printed in England and on the Continent; the analyses of the works criticised and the dissertations to be introduced to be of a profounder and bolder character than those which appeared in the monthly publications to which reviewing in England had been confined. Wedderburn was the editor. Thus was the first number entitled,—

Wedderburn editor.

First number.

"The
Edinburgh Review,
Numb. I.
[To be published every six months].
Containing an account of all the BOOKS and PAMPHLETS that have been published in Scotland from the 1st of January to the 1st of July, 1755.
To each Number will be added an APPENDIX, giving an account of the Books published in England and other countries, that are most worthy of notice."

The PREFACE was by Wedderburn, and as this is almost the only literary composition which can be distinctly traced to him, there may be a general desire to peruse it. I own it seems to me to be a very promising specimen of his powers, and it may raise regret that he afterwards abandoned authorship in quest of fame more fleeting, if more flattering:—

The Preface written by Wedderburn.

"The design of this work is to lay before the public, from time to time, a view of the progressive state of learning in this country. The great number of performances of this

* "We cultivate literature upon a little oatmeal."

† The historiographer of the present Edinburgh Review says, "We took our present grave motto [Judex damnatur cum nocens absolvitur], from Publius Syrus, of whom none of us had, I am sure, ever read a single line."—*Preface to Sydney Smith's Works.*

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nature which, for almost a century past, have appeared in every part of Europe where knowledge is held in esteem, sufficiently proves that they have been found useful.

"Upon the first revival of letters in Europe their progress in Scotland was very rapid and very remarkable. The force of Buchanan's numbers, the elegance of his manner, and the undaunted spirit of liberty he breathes, entitle him to be named with the most chosen spirits of Leo X.'s age, and reflect a splendour upon the rise of science in the North. From such a beginning Scotland might well have flattered herself with hopes of attaining a distinguished rank in the literary world. But those happy prospects soon gave place to the melancholy scene of disorder and violence which civil dissensions produced. Letters could not be cultivated where humanity was neglected; the precepts of philosophy suited ill with the rage of party; nor could the arts of peace flourish in a country averse to industry and rent with divisions. Upon the accession of James VI. to the crown of England, the minds of men were entirely occupied with that event. The advancement of their own fortune became an object of attention to very many; whilst the general interest of their country was little regarded. The more unquiet it remained, the more influence would each individual share, who had ambitious desires to gratify. Thus, unfortunately, private interest was opposed to the public good, and the improvement of Scotland was not at that time an agreeable idea to England, jealous and disgusted with the preference shown by the monarch to particular Scotsmen.

"From this state of languor and retardation in every species of improvement Scotland soon passed through a series of more dreadful evils. The devastations of Charles I.'s reign and the slavery of Cromwell's usurpation were but ill repaired by the tyranny and oppression of Charles II.'s ministers and the arbitrary rule of James VII. Amidst all the gloom of those times there were still some men who kept alive the remains of science, and preserved the flame of genius from being altogether extinguished. At the Revolution, liberty was re-established and property rendered se-

cure; the uncertainty and rigour of the law were corrected and softened; but the violence of parties was scarce abated, nor had industry yet taken place. What the Revolution had begun, the Union rendered more complete. The memory of our ancient state is not so much obliterated but that, by comparing the past with the present, we may clearly see the superior advantages we now enjoy, and readily discern from what source they flow. The communication of trade has awakened industry; the equal administration of laws produced good manners, and the watchful care of the government, seconded by the public spirit of some individuals, has excited, promoted, and encouraged a disposition to every species of improvement in the minds of a people naturally active and intelligent. If countries have their ages with respect to moral advancement and decline, North Britain may be considered in a state of early youth, guarded and supported by the more mature strength of her kindred country. If in any thing her advances have been such as to mark a more forward state, it is in science. The progress of knowledge depending more upon genius and application than upon any external circumstance, wherever these are not repressed, they will exert themselves. The opportunities of education, and the ready means of acquiring knowledge in this country, with even a very moderate share of genius diffused through the nation, ought to make it distinguished for letters. Two considerable obstacles have long obstructed the progress of science. One is the difficulty of a proper expression of ideas in a country where there is either no standard of language, or, at least, one very remote. Some late instances, however, have discovered that this difficulty is not insurmountable; and that a serious endeavour to conquer it may acquire, to one born on the north side of the Tweed, a correct and even an elegant style. Another obstacle arose from the slow advances that the country had made in the art of printing: no literary improvement can be carried far where the means of communication are defective: but this obstacle has been of late entirely removed; and the

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reputation of the Scotch press is not confined to this country alone.

"It occurred to some gentlemen that at this period, when no very material difficulties remain to be conquered, a periodical view of the gradual advances of science would incite our youth to a more eager struggle to improve their minds, to gain distinction for themselves, and to do honour to their country. With this object the present work was undertaken, — in which it is proposed to *give a full account* of all books published in Scotland within the compass of half-a-year; and to take some notice of such books published elsewhere as are most read in this country, or seem to have any peculiar title to public attention.

"These are the motives and the plan of the present undertaking: the execution of it the public must judge of. Those who are concerned in carrying it on, hope, if the public should ever judge unfavourably of the execution, they will not condemn the attempt. One may judge of other men's writings with talents much inferior to those of the author; and to criticise is known to be easier than to compose. They are only to exercise over every book that right which the author confers upon the meanest of his readers: they are to judge with candour, but with freedom; opinions they are only to state, not to combat. Falsehood they will upon all occasions endeavour to detect: immoralities they would rather choose to bury in oblivion. Principles of irreligion or disaffection they will always strive to expose; as a zeal for the religion and constitution of their country can never be inconsistent with the greatest candour. It will always be more agreeable to them to find occasion for praise than for censure. But as their inclination leads them powerfully to indulge the one, their duty to the public will sometimes require them to exercise the less pleasing office. The authors expect no praise to themselves for a work in which to be useful is their only aim. In the conducting of it they hope they shall merit no personal blame. The success of the work they have earnestly at heart, as it may be attended with national benefit. To advance this end they will cheerfully

accept the assistance of any gentleman who will contribute towards it by transmitting to the publisher his sentiments of any book; — or in general any literary memoirs, criticisms, or observations he would wish to communicate to the world."

Article by Wedderburn on Barclay's Greek Grammar.

Wedderburn contributed to the First Number one short article on the "Rudiments of the Greek Tongue, by Mr. James Barclay, schoolmaster at Dalkeith," in which he took occasion to pay a tribute of respect and gratitude to his old preceptor: "A more plain and familiar Greek Grammar was certainly wanting. Mr. Barclay, to whose merit as a schoolmaster we are glad to bear testimony, has thought it his duty to endeavour to supply this want. It is his practice to teach his pupils Greek at a much earlier period than is usual in other places. The success of this method sufficiently appears in the progress several of his scholars have made, who frequently come from his school better Greek scholars than many of those who have been three years at an university." The more prominent articles on Scotch publications were written by Robertson, Blair, and Jardine. The Appendix contained a criticism on Dr. Johnson's Dictionary, by Adam Smith, strikingly displaying the profound philosophical knowledge of the formation of language possessed by this philosopher.*

Offence taken at some articles on religion.

The first number of the EDINBURGH REVIEW was well received, and in January 1756, it was succeeded by a second, which had likewise an extensive sale. But, says Lord Kames, "the censure they most justly bestowed on some fanatical preachers excited such an outcry, that a regard to the public tranquillity, and their own, determined the Reviewers to discontinue their labours."—I am rather at a loss to understand what articles are here referred to; for all the discussions on theological subjects are conducted with such decency and propriety, that they could hardly have given offence to the most intolerant. Doubts are expressed in an

* There was a great mystery observed for a long time respecting the authorship of the different articles, and, indeed, with respect to the names of all connected with the publication. For some reasons not explained, David Hume was not a contributor, and was not let into the secret. — *Lord Commissioner Adam's Journal.*

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article supposed, without any certain authority, to have been written by Wedderburn, as to the expediency of the University having expelled, and the Presbytery excommunicated, the author of an infidel publication, — but in the following becoming terms, which might have been used by the most pious father of the Church: "We are almost ashamed to say we have read this pamphlet. 'Tis such a low, scurrilous libel, that even the most necessitous printer or bookseller must be at a loss to find a decent excuse for publishing it. And, therefore, we hope our readers will excuse our giving any extract of such a thing as it is. We shall only add, that in our opinion, both the University and Presbytery did wrong in taking so much notice of such a criminal; for it was impossible for them to inflict a more severe sentence than that to which he has brought himself, and from which 'tis not in their power to absolve him, viz. *Universal Contempt.*" From whatever cause, after the second number the Review was abandoned, and notwithstanding the extreme modesty of the preface, the authors were probably a good deal disappointed in their hopes of deriving from it both fame and emolument.

Review discontinued.

Wedderburn's longings after the English bar.

Wedderburn's successes and reverses equally fostered in him a growing discontent with his own country. When he considered the *éclat* which he had acquired from his oratorical powers, he was impatient to display them on a wider stage. Again, although he was restrained by prudence from exceeding his narrow income, he had a passion for expense and magnificence which he could never hope to gratify from the scanty fees of the Parliament House. He likewise fostered a lofty ambition, which would be by no means satisfied by his becoming like his ancestors a "Senator of the College of Justice at Edinburgh." Although delighted to converse with Robertson, Hume, and Adam Smith, he was shocked by the prospect of spending his life among a people so bigoted and intolerant that they would not endure a publication undertaken to civilise and enlighten them, although it was conducted with perfect respect for religion, and with a laudable tenderness even for existing prejudices.

A.D. 1756.

Death of his father.

A melancholy event had dissolved the chief tie which attached him to his native country. On the 11th of August, 1756, his father died suddenly, when little turned of fifty, and with the prospect before him of long life. Next day appeared the following notice of this event in the Caledonian Mercury, supposed to be a tribute to his memory, in the midst of deep grief, from a pious son: "Yesterday morning died here Peter Wedderburn, Esq., of Chesterhall, one of the Senators of the College of Justice; a man of ability, of integrity, and candour; whose disinterested benevolence and manly spirit was adorned rather than obscured by a remarkable degree of modesty. The universal and uncommon regret which his death has occasioned, proves, indeed, that true fame is the certain attendant of genuine worth; but also proves how seldom characters so truly excellent appear in the world. When he had reached a situation that rendered his services more conspicuous, and most extensively useful, he was removed from us by a death which seems untimely, on account of his early years, notwithstanding the public veneration for his virtues."

Wedderburn notifies the resignation of David Hume as librarian to the Faculty of Advocates.

Wedderburn, however, still wanted courage to take the desperate leap which he had long meditated; and he went on prosecuting his profession in Scotland nearly a year after his father's death. He continued to be appointed a public examinator, an advocate for the poor, and a curator of the Faculty's Library. At the anniversary meeting of the curators, held on the 4th of January, 1757, "Mr. Alexander Wedderburn acquainted the Faculty that he had been authorised by David Hume, Esquire, to intimate to them his resignation of the office of their library keeper, and to assure them that he had, and would always retain a due sense of the honour done him by the Faculty in conferring that office upon him; and being interrogated whether he had any commission to show from Mr. Hume for that purpose, answered that he had no commission in writing, which was thought not necessary, as Mr. Hume had this very day acquainted divers other members of the Faculty of that matter. The Faculty were of

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opinion that Mr. Hume should direct a letter to the dean or vice-dean, signifying the same, under his hand."*

A. D. 1757.

A letter was then written by Hume, containing a formal resignation of the office of librarian, which he had obtained with such difficulty, and which had been of such service to him in the composition of his history, but which he had for some time found irksome on account of disputes with some members of the Faculty, in which it had involved him. The selection he made of an agent on this occasion shows the confidence he continued to repose in Wedderburn, as yet only in his 24th year.

His doubtful success at the Scotch bar.

But I suspect much that our advocate did not stand so high in the estimation of the W. S.'s and S. S. C.'s who had the distribution of briefs, and that in spite of his solemn step and grave deportment, unless when he pleaded for some "Peter Planestanes," suing *in forma pauperis*, he was generally silent before the Lords Ordinary and the Inner House.

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Nevertheless, he might have remained at the Scotch bar, meditating his great scheme of southern conquest till revolving years rendered the attempt impossible for him, had it not been for a scene which took place in the Parliament House towards the end of the summer session of this year, and which fixed his destiny. The Dean of Faculty at that time was Mr. Lockhart, afterwards Lord Covington, a man of learning, but of a demeanour harsh and overbearing. It had ever been considered the duty of the chief of the body of advocates, freely elected to preside over them, to be particularly kind and protecting to beginners†; but Lockhart treated all who came in contact with him in a manner equally offensive, although he had been engaged in a personal altercation with a gentleman, out of court, who had threatened to

His quarrel with Lockhart the Dean of Faculty.

* See Burton's Life of Hume.

† One of the most effectual interpositions in favour of a junior was by old John Clerk, afterwards Lord Eldin. A presumptuous youth to whom he was opposed, and against whom the Court decided in a very peremptory manner having declared that "he was much *astonished* at such a decision," there was a threat of committing him to the *tolbooth* for his *contempt*, when Clerk caused a universal laugh, in which the reverend sages of the law joined the loudest, by saying, "My Lords, if my young friend had known your Lordships as long as I have done, there is no decision of your Lordships which could have *astonished* him!!!"

inflict personal chastisement upon him; and there were some circumstances in his domestic life supposed to render his reputation vulnerable. At last four junior advocates, of whom Wedderburn was one, entered into a mutual engagement that he among them who first had the opportunity should resent the arrogance of the Dean, and publicly insult him. It was by mere accident that the opportunity occurred to Wedderburn, who certainly made a good use of it.*

Scene in the Parliament House.

In the very end of July or beginning of August, 1757, (the exact day I have not been able to ascertain)†, Wedderburn was opposed in the Inner House as counsel to Lockhart, and was called by him a "presumptuous boy," experiencing from him even more than his wonted rudeness and superciliousness. When the presumptuous boy came to reply he delivered such a furious personal invective as never was before or since heard at the Scottish bar. A lively impression still remains of its character; but newspaper reporting was then unknown in Edinburgh, and oral tradition has preserved only one sentence of that which probably was the meditated part of the harangue: — "The learned Dean has confined himself on this occasion to vituperation; I do not say that he is capable of *reasoning*, but if *tears* would have answered his purpose I am sure tears would not have been wanting." Lockhart here started up and threatened him with vengeance. *Wedderburn:* "I care little, my lords, for what may be said or done by a man who has been disgraced in his person and dishonoured in his bed." Lord President Craigie, being afterwards asked why he had not sooner interfered, answered, "Because Wedderburn made all the flesh creep on my bones." But at last his lordship declared in a firm tone, that "this was language unbecoming an advocate and unbecoming a gentleman." Wedderburn, now in a state of such excitement as to have lost all sense of decorum and propriety, exclaimed that "his lordship had said as a judge what he could not justify

* *Letter to me from the Ex-Lord Justice General* HOPE. — He adds, "I do not now recollect the names of all the young men, but the late Sir Wm. Pultney, then Mr. Johnstone, was one of them."

† I know that it must have been after the 26th of July, for on that day he was reappointed by the Faculty one of the Advocates for the poor — and it must have been before the 10th of August, when the summer session ended.

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as a gentleman." The President appealed to his brethren as to what was fit to be done, — who unanimously resolved that Mr. Wedderburn should retract his words and make an humble apology, on pain of deprivation. All of a sudden, Wedderburn seemed to have subdued his passion, and put on an air of deliberate coolness, — when, instead of the expected retractation and apology, he stripped off his gown, and holding it in his hands before the judges, he said, "My Lords, I neither *retract* nor *apologise*, but I will save you the trouble of *deprivation;* there is my gown, and I will never wear it more; — *virtute me involvo.*" He then coolly laid his gown upon the bar, made a low bow to the judges, and before they had recovered from their amazement, he left the court, — which he never again entered.

He sets off for London.

That very night he set off to London. I know not whether he had any apprehension of the steps which the judges might have taken to vindicate their dignity, or whether he was ashamed to meet his friends of the Parliament House, but he had formed a resolution, which he faithfully kept, to abandon his native country, and never more to revisit it.*

He is superseded as Curator of the Advocates' library.

That I may conclude all that I have to say of him connected with Scotland, I may here notice that on the anniversary meeting of the Faculty, on the 3d of Jan. 1758, "It being represented that Mr. Alexander Wedderburn, a curator of the library, was now residing in London, and therefore that it would be proper to name some person in his room, the Faculty deferred to appoint a successor to him, until they should understand from himself whether he intended to return soon to this country, and appointed that Mr. Andrew Pringle, His Majesty's solicitor, the now senior curator, should write to Mr. Wedderburn for information on that matter." I suspect that no answer was returned; and that nevertheless

* Lockhart was afterwards, at the age of seventy-five, promoted to the Bench, and (as it is said) on the recommendation of Lord Loughborough. He was a very useful Judge for some years. It is also said that Lord Loughborough gave a gown to Lord Polkemmet as a compensation for having given him bad advice to try a cause, and appeal it to the House of Lords. Baillie *v.* Tennant, 17th June, 1766. Morrison, 1491. This was more questionable, both in principle and in result.

a year of grace was allowed him; for under date Jan. 2. 1759, there is the following entry in the minutes of the Faculty, "Mr. Alexander Wedderburn, one of the curators of the library, being now resident in London, and unable to attend to the duties of this office, Mr. Adam Fergusson is substituted in his room."

Q. Whether his throwing off his gown was premeditated with a view to his removal to England?

My own opinion is, that Wedderburn's exit from the Parliament House was unpremeditated. Many suppose, however, that it was contrived to give greater *éclat* to his change of destination. Lord Commissioner Adam says, "He always intended to quit Scotland, and pursue the profession in England; and he is believed to have taken that opportunity of showing his determination by stripping his gown from his shoulders and laying it on the bar." He himself was conscious that his conduct was wholly unjustiable as regarded Lockhart, and still more as regarded the Lord President Craigie. "I lived," adds the Lord Commissioner, "in great intimacy with Lord Loughborough for very many years, and he never came upon this part of his life in Scotland. Mr. Lockhart's eldest son, a very sensible man, who was at the English bar, received great attention from his lordship; and it always struck me that he had particular pleasure, from his natural kindness of disposition, in making amends for any wrong that had been done to the father."

CHAPTER CLXIV.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL HE BECAME A PATRIOT.

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A. D. 1757. Wedderburn's journey to London.

TRAVELLING by a heavy stage coach which carried six inside passengers — the swiftest public conveyance then known between the two capitals of Britain — Wedderburn reached his destination early in the morning of the sixth day after his departure from Edinburgh.* We are left to conjecture what his feelings were as the clumsy vehicle rattled down the High-street, whose lofty houses he was to behold no more — as he caught the last glimpse of Arthur's Seat, from which he had so often admired the beautiful environs of his "own romantic town" — as he crossed the bridge over the Tweed, and recollected that, however he might fare in his great adventure, there was no retreat for him — as in the grey light of the last dawn that was to break upon him in his fatiguing journey, he descried from Highgate the towers of Westminster Abbey, near which was the scene of all his hopes and fears. He had given orders for his books to follow him by a Leith trader, and his wardrobe accompanied him in his portmanteau. These constituted the great bulk of his wealth, for his father had left Chesterhall burdened by debt to the full amount of its value, and his scanty earnings at the Scotch bar had been insufficient to maintain him without the assistance of his family. But he brought with him not only brilliant talents and varied accomplishments,

* When I first reached London I performed the same journey in three nights and two days, Mr. Palmer's mail coaches being then established; but this swift travelling was considered dangerous as well as wonderful, — and I was gravely advised to stop a day at York, "as several passengers who had gone through without stopping had died of apoplexy from the rapidity of the motion." The whole distance can now be accomplished with ease and safety in fourteen hours, and very soon intelligence may be communicated from the one capital to the other in as many seconds.

but an unconquerable resolution to justify to his friends and to the world the hazardous step which he was taking. He had screwed his courage to the sticking place, and he could not fail.

His arrival there.

He was set down at the Bull and Mouth Inn, behind St. Paul's, and he remained quartered there for a few days, till he was lucky enough to be able to hire on moderate terms a small set of chambers in the Temple. The City he found in the noisy bustle by which it is characterised at all seasons of the year; but beyond Charing Cross he found shutters all closed, and grass beginning to grow in the streets. However, he little regretted the absence of gay company, for he was eager to devote himself day and night to the preparation for his call to the English bar. Dr. Clephane was in town, and received him kindly; but he now seldom indulged in a visit to the old physician, who, although of a highly cultivated understanding and agreeable manners, had been born in the county of Fife, and spoke in a Scottish dialect peculiarly broad and drawling. Wedderburn's desire to purify his own accent had grown into a passion, and for this purpose there was no exertion or privation to which he was not willing to submit. Scotchmen he long avoided, as if he had been afraid of some contagious disease by shaking hands with them.

He takes chambers in the Temple.

Becomes a pupil of Sheridan.

To his great delight he found that Sheridan, in whose *tùm-tĭ-tùm* he still placed entire confidence, was in London, negotiating an engagement on the stage, and superintending the publication of his "Lectures on Elocution." The old gentleman was much flattered by the homage he received from the Scotch advocate, whom he had seen holding such a high position at Edinburgh, — and, in consideration of this rather than of the pecuniary compensation offered to him, agreed to take him as a pupil, and to give up to him the greatest portion of his time. Sheridan came daily to the Temple at an early hour in the morning, and with a short interval for breakfast, they continued talking, reading, reciting, and declaiming together during the greater part of the day. It being now the depth of the long vacation,

they were in little danger of disturbing any student by their loudest tones. In the evenings, when left alone, Wedderburn would open Blackstone and Lord Coke; but such studies excited little interest comparatively in his mind; and when he sunk to sleep, instead of arguing in his dreams a case before Lord Mansfield on a contingent remainder, he conceived himself repeating Brutus's speech over the dead body of Cæsar, under the correction of his master,—or actually making an attack on a public delinquent, in the House of Commons, amidst the cheers of his audience. He never had the advantage of being pupil with a conveyancer, special pleader, or equity draughtsman. He would have been pleased to have attended a course of lectures on the municipal law of England, but none were delivered.

And of Macklin.

In the middle of October Sheridan was obliged to go over to Ireland on some theatrical business, and his place was supplied by Macklin. This great actor and dramatist had not yet distinguished himself by his abuse of the Scottish nation, and he professed himself much taken by the sprightly manners and conversation of Wedderburn, to whom he had been introduced by Smollett. He was too much occupied to devote so much time to him as Sheridan had done; but he was more useful in modelling cadences, and regulating action. Under these two instructors Wedderburn continued to practise alternately, and sometimes under both on the same day, for many months,—till by degrees a great change was worked upon his accent and delivery. Mr. Croker, in his edition of Boswell, naturally enough adds: "This is an odd coincidence. A Scotchman who wishes to learn a pure English pronunciation employs one preceptor who happens to be an Irishman, and afterwards another likewise an Irishman; and this Irish-taught Scot becomes (and mainly by his oratory) one of the chief ornaments of the English senate, and the first subject in the British empire." It is very doubtful whether Garrick or Kemble would have succeeded better than the two Hibernians.—We must likewise recollect that they introduced their pupil to their histrionic associates, and that he became

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Q. How far his acquired English accent contributed to his fortune?

a frequenter of the Green-Room, where he could advantageously practise some of the rules they had laid down for him. Through these means the effect of Wedderburn's eloquence ceased to be at all impaired by pronunciation; and his vicious manner became polished and impressive. But still there never flowed from him a natural stream of eloquence; he always seemed studying how he could give most effect to his expressions, and, unless when he was occasionally impassioned, his manner was precise and affected. While his transformation was at all events gratifying to his vanity, there may be some doubt how far it was the foundation, as is generally supposed, of his good fortune; for his old schoolfellow Harry Dundas, who took no thought about such things, and ever continued to talk as broad Scotch as when they were under the discipline of Mr. Barclay at Dalkeith, was listened to with equal favour in the House of Commons, and enjoyed more power and influence in the State — having been for many years king of Scotland, and guiding with the younger Pitt the destinies of the empire.*

It is said that in the decline of life Wedderburn's Scotticisms and vernacular tones returned, showing that all the while his "English" was the effect of constant effort, which could not continue when his attention was relaxed, and his powers were enfeebled.†

* The following is Boswell's estimate upon this subject — "Mr. Macklin indeed shared with Mr. Sheridan the honour of instructing Mr. Wedderburn; and though it was too late in life for a Caledonian to acquire the genuine English cadence, yet so successful were Mr. Wedderburn's instructors and his own unabating endeavours, that he got rid of the coarse part of his Scotch accent, retaining only as much of the 'native wood-note wild' as to mark his country, which if any Scotchman should affect to forget, I should heartily despise him. Notwithstanding the difficulties which are to be encountered by those who have not had the advantage of an English education, he by degrees formed a mode of speaking to which Englishmen do not deny the praise of elegance. Hence his distinguished oratory which he exerted in his own country as an advocate in the Court of Session and a ruling Elder of the *Kirk*, has had its fame and ample reward in much higher spheres. When I look back on this noble person at Edinburgh, in situations so unworthy of his brilliant powers, and behold Lord Loughborough at London, the change seems almost like one of the metamorphoses in Ovid, and as his two preceptors by refining his utterance gave currency to his talents, we may say in the words of that poet, '*Nam vos mutastis.*'" — 1 *Boswell*, p. 365.

† Lord Brougham's "Statesmen," vol. i. p. 72.

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He is called to the English bar.

He had only one additional term to keep to complete his curriculum of English juridical study, and having eaten five more dinners in the Hall,—on the 25th of November, 1757, he was called to the English bar.* Next day he put on his bombazeen gown, his cambric band, and his well-powdered whig, and took the oaths of allegiance, supremacy, and abjuration, in the Court of King's Bench.

His plans and prospects.

It is difficult to conjecture by what process he expected to get forward in the profession, and he probably trusted a good deal to fortune and accident. The system of periodical publication of law reports had not then begun, and the composition of law books by young men, as a proof of proficiency, was not thought of. Quarter Sessions were rarely attended by barristers, and Wedderburn had so little interest in any part of England, that out of economy he resolved not to go any circuit. Lord Mansfield, his countryman, to whom he had been introduced, favoured only Westminster and Christchurch men, and he had not the slightest acquaintance with any other Judge on the bench. To all English attorneys and solicitors he was wholly unknown, and he by no means possessed the acquaintance with practice and pleading which might induce them in their difficulties to resort to a stranger. He expected some encouragement from the Scotch agents before the House of Lords for retainers in Scotch appeals, and he had an extensive Scotch connection in London, from which briefs might be expected. His sister had married Sir Henry Erskine, an intimate friend of Lord Bute; there was hardly any prosperous Scotchman in London whom he could not influence, and being the only Scotchman at the English bar, if he could once show that he was likely to rise, he had good hopes from the nationality of his countrymen.

His habits.

He was regular in his attendance in the Court of King's Bench in the morning, but did not shut himself up in chambers in the evening. He went a good deal into society, and was frequently to be seen at the theatre. But in reality

* Books of Inner Temple.

he was more actuated by a love of business than by a love of pleasure. Circumstanced as he was,

> "To shun delights and live laborious days,"

did not seem to be the discreet course. He was to make friends who were to push him on.

His system was to recommend himself rather by being a good listener than a great talker. We have the following picture of his modest demeanour in company at this time in the Autobiography of Richard Cumberland: "The play of the 'Wishes,' under the auspices of Lord Bute, was privately rehearsed at Lord Melcombe's villa of La Trappe. It was a beautiful summer evening when it was recited on the banks of the Thames by O'Brien, Miss Elliott, Mrs. Haughton, and some few others, under the management of Foote and Murphy, who attended on the occasion. At this rehearsal there was present a youth, unknown to fame, who was understood to be protected by Lord Bute, and came thither in a hackney coach with Mrs. Haughton. This gentleman was of the party at the supper with which the entertainment concluded: he modestly resigned the conversation to those who were more disposed to carry it on, whilst it was only in the contemplation of an intelligent countenance that we could form any conjecture as to that extraordinary gift of genius which, in course of time, advanced him to the great seal of the kingdom and the earldom of Roslyn."

He establishes a club at the British.

To strengthen himself he established a club somewhat on the plan of the "Poker." This at first consisted of the most distinguished Scotsmen then residing in London. Smollett, Armstrong, Pitcairn, William Hunter, John Home (now wearing a brown coat), Sir Gilbert Elliot, Mr. Robert Adam, the architect, and Sir Harry Erskine. They met at the "British Coffee House," in Cockspur Street, ever a favourite Scottish haunt, and then kept by a very clever lady, Mrs. Anderson, sister of Douglas, Bishop of Salisbury. Garrick and several celebrated Englishmen were afterwards admitted. They all felt a lively interest in the progress of brother Wedderburn, and looked out for opportunities to

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recommend him to a brief. When the occasion required, he was capable of the most intense application, and he could submit to any sacrifice. He was ever cautious to avoid the example of Murphy and other legal friends, who by a love of literature and the drama had been led astray from their professional career. He had little respect for authorship, and he would sooner have been Lord Hardwicke than Shakespeare.

He canvasses for business.

About the means he used to procure employment he seems to have been by no means over-delicate. His countryman Strahan, the printer, now rode in a coach, and had much to say with the city attorneys. Wedderburn without scruple applied to him for his interest to get briefs in causes at Guildhall,—and with some effect. Strahan having afterwards mentioned this circumstance in the presence of Dr. Johnson and Boswell, the question was discussed, "How far it is allowable for a barrister to canvass for business." Johnson rather defended the practice, saying, "I should not solicit employment as a lawyer, — not because I should think it wrong, — but because I should disdain it."

Professional etiquette at the English bar.

Professional etiquette has been carried to a ridiculous extent,—as in forbidding a barrister on the circuit to dine with an attorney, or to dance with an attorney's daughter— whereas the attorney is often a gentleman as well born, as well educated, and as well mannered as the barrister. But the respectability of our order, and, consequently, the public good, peremptorily require that all solicitation of business by barristers should be forbidden, and that all indirect means to obtain it should be considered discreditable. There is a useful *surveillance* exercised on the circuits by means of the GRAND COURT, whereby such practices are repressed; and it would be highly beneficial if we had in London a DEAN OF FACULTY, with a council, to lay down and enforce salutary rules of discipline for preventing or punishing irregularities among members of the bar, that merit may enjoy its fair chance of success.

Wedderburn's moderate suc-

Wedderburn, notwithstanding all his good and evil arts, never seems to have had a regular set of clients, or a steady

flow of business, while he remained in a stuff gown. He was employed, at intervals, in cases in which a "splash" was to be made,—particularly where actors and authors were the parties. Newspapers now began occasionally to notice trials of public interest, although there were no daily reports of "Law proceedings," and Wedderburn's name appeared more frequently in print than that of others who, in truth, were going on much more steadily and successfully. Doctor Robertson, misled by this circumstance, in a visit he made to London in 1759, wrote as follows to his friend, Dr. Jardine:—"Wedderburn makes all the progress we could wish: even the door-keeper of the House of Peers tells me 'he is a d—d clever fellow, and speaks devilish good English.' This very morning he was retained in a Plantation cause, before the Privy Council, which is a thing altogether extraordinary for so young a man. You cannot imagine what odd fellows his rivals are, and how far, and how fast, he is likely to go."

cess till he plunged into politics.

Letter from Dr. Robertson mentioning Wedderburn's progress at the English bar.

But Wedderburn's fee-book did not present a flattering result; there was little chance of his getting on at the bar by rising professional reputation, and he concluded that it was only through politics that he could hope for legal preferment. For the first three years of his residence in England party struggles had entirely ceased,—there was hardly a division in either house of parliament in a whole session,—and it seemed as if never again would there be any scope for adventure in courtiership or patriotism. To our keen-eyed Scotchman, however, "coming events cast their shadows before." George II., though in good health, had reached a great age. Lord Bute, on very intimate terms with the Princess Dowager of Wales, was supposed to enjoy a great influence over the heir-apparent to the throne, and had instilled into his mind principles of government which, when acted upon, were sure to bring about a complete change in the aspect of public affairs. The embryo minister had been a member of the "Select Society" at Edinburgh, and had taken much notice of our *débutant* from the time when he was called to the English bar, not only introducing him into fashion-

Unpromising state of affairs for parliamentary adventurers at the latter end of the reign of George II.

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able London society, but confidentially conversing with him respecting the plans and prospects of Leicester House.

A.D. 1760. Accession of George III.

On the 25th of October, 1760, it was announced that the old king was no more, and a sudden joy was infused into the minds of all those who had looked forward with impatience to a new reign. The multitude believed that there would be no change in the public councils, and that Pitt, who had so raised the national glory, might continue to hold the reins of government as long as Sir Robert Walpole; but the initiated knew that a scheme had been laid not only to break down the Whig aristocracy, which for half a century had monopolised all the favours of the crown, but to encourage the doctrine of divine hereditary right, and to rule on the genuine Church-and-King maxims which had been thought incompatible with the title of the Hanoverian dynasty.

Sept. 27. 1760. March 25. 1761. May 2. 1762.

Wedderburn supports Lord Bute.

The favourite's dependents enjoyed the satisfaction of seeing him first sworn a privy councillor, then made secretary of state, and, finally, placed at the head of the Treasury, and declared prime minister. Neither upon the present nor any subsequent turn of his fortune was Wedderburn at all troubled by political qualms,—and with an unclouded mind he only considered what course was most for his own advantage. He belonged to a Whig race, and he would never in his own country join any of the clubs who, on their knees, drank to "the King over the water,"—although a majority of the advocates retained the same Jacobitical opinions which animated them when they so graciously received the medal from the Duchess of Gordon, with the motto "Suum cuique tribuito." He was now willing to think that not only was it improper to exclude one great party in the state from the participation of power and patronage, but that the right of the people to interfere in the affairs of government had been pushed to an inconvenient length from the necessity of guarding against a Popish ruler,—and that when protestantism was at last secure under a monarch who wished to show himself truly the "Defender of the Faith" by refusing civil privileges to all who did not belong to the established religion of the country, the time was come when popular licentiousness might be

repressed, and the people, ever incapable of governing themselves, might be governed by that prerogative which, for their benefit, God had bestowed upon his vicegerent the King. He therefore professed himself a warm partisan of Lord Bute, and by his influence was returned to the House of Commons for the Rothsay and Inverary district of Scotch burghs.*

He is returned to Parliament.

From the very defective account we have of parliamentary proceedings at this period, we are left in almost entire ignorance of Wedderburn's early parliamentary career. We know that he was not only a steady voter, but that he was a frequent speaker in support of Lord Bute while that minister remained in office, and as long as there was any chance of his return to power.† He braved all the fury of the storm which burst out against his nation, and joined in the resolution that the "North Briton, No. 45., should be burnt by the hands of the common hangman." He had the mortification to see his friend and preceptor Macklin pandering to the passions of the English mob by bringing Sir Archy Macsarcasm and Sir Pertinax Macsycophant on the stage, with some touches of character which he was supposed to have taken from Wedderburn himself. It is said that he tried to retaliate in the periodical publications of the day, and that he was particularly severe in exposing the irregularities of the profligate Churchill, who, in his "Prophecy of Famine," had with great felicity ridiculed the pride and poverty of the Scotch‡; but I have been unable to learn any particulars of

No account extant of his early speeches.

Abuse of the Scotch.

* Journals, 12th Parliament of Great Britain.

† The only information I can find of any particular debate in which he took part, is in a letter signed Clio, published in the Morning Post in the year 1775: — "He once entered the lists with Mr. Pitt, under Lord Bute's administration, upon the subject of general warrants, by producing one of that Minister's for seizing a ship. Wedderburn asked with great triumph if martial law existed on the river? Pitt, amidst a blaze of indignant eloquence, asked, if the great Statute of Treasons there existed? defended himself with becoming spirit, and ran down the Scotchman beyond the possibility of a reply."

‡ I know few finer efforts of *imagination* than his description of Scotland in the "Prophecy of Famine," beginning —

> "Far as the eye could reach no tree was seen,
> Earth clad in russet scorn'd the lively green;
> No living thing, whate'er its food, feasts there,
> But the Cameleon who can feast on air;
> No birds, except as birds of passage, flew,
> No bee was known to hum, no dove to coo."

CHAP. CLXIV.

A.D. 1763.

this warfare which he carried on, to justify the national motto—"Nemo me impune lacessit."*

There seems much probability in the story of his personal quarrel with Churchill, from the savage manner in which he is assailed in the "Rosciad:"—

> "Roscius deceased, each high aspiring player
> Pushed all his interest for the vacant chair."

Character of Wedderburn in the Rosciad.

Wedderburn is introduced to us as counsel for Murphy:—

> "To mischief trained, e'en from his mother's womb,
> Grown old in fraud, though yet in manhood's bloom,
> Adopting arts by which gay villains rise
> And reach the heights which honest men despise,
> Mute at the bar, and in the senate loud,
> Dull 'mongst the dullest, proudest of the proud,
> A part prim proter of the Northern race,
> Guilt in his heart, and famine in his face,
> Stood forth; and thrice he waved his lily hand,
> And thrice he twirl'd his tye—thrice stroked his band;—
> 'At friendship's call' (thus oft, with trait'rous aim,
> Men void of faith usurp faith's sacred name),
> 'At friendship's call I come, by Murphy sent,
> Who thus by me develops his intent.'"

Wedderburn obtains a silk gown.

Meanwhile Wedderburn reaped the first reward of his party zeal by obtaining a silk gown—then a high distinction. He immediately communicated the good news to his mother at Edinburgh in the following letter, which shows the great difficulty he had to give the old lady a notion of the nature of his new office:—

"Lincoln's Inn, Feby. 18th, 1763.†

"DEAR MAMMA,

"You will not be sorry to hear that I have kissed his Majesty's hand for a preferment which the newspapers had bestowed upon me long ago. It is an honour which may be of considerable

* Generally speaking, the Scotch in London at this time as little resented as provoked the persecution excited against them. The state of the public mind is described in a lively manner by Hume, in a letter to Robertson, dated 14th January, 1765. "The rage and prejudice of parties frighten me; and above all, this rage against the Scots, which is so dishonourable, and, indeed, so infamous to the English nation. We hear that it increases every day, without the least appearance of provocation on our part. It has frequently made me resolve never in my life to set foot on English ground."

† He had some time before transferred himself to Lincoln's Inn, for the convenience of occupying chambers there, and he was at this time elected a Bencher of that Society.

service to me hereafter, though attended with no present profit. But it is what I wished for extremely, and I feel myself under the highest obligations to the Chancellor for this instance of his protection and goodness to me.

"I can't very well explain to you the nature of my preferment, but it is what most people at the bar are very desirous of, and yet most people run a hazard of losing money by it. I can scarcely expect any advantage from it for some time equal to what I give up, — and, notwithstanding, I am extremely happy, and esteem myself very fortunate in having obtained it.

"I am sure it will give great pleasure to my aunt and you, to know of my having met with any good fortune—and I ever am,

"Your dutiful and affectionate Son,

AL. WEDDERBURN."*

His forray on the Northern circuit.

I now reach a passage of his history which shocks us lawyers excessively, although its enormity may not be so palpable to the "*lay gents*,"—the uninitiated. He had never yet gone any circuit, and no rule can be better established among us than that a barrister is not for the first time to join a circuit with a great professional reputation already acquired, whereby he may at once step into full business, and suddenly disturb vested rights. For this reason a barrister may only change his circuit once, and this must be done (if at all) while he is still "clothed in stuff." The penalty for the transgression of such a rule is, that the offender is excluded from the bar mess on the circuit, and although he cannot be prevented from appearing in Court and pleading a cause for any client who may employ him, no other barrister will hold a brief with him, and he is "sent to Coventry."

The spirit, if not the letter of this law was now flagrantly broken by Wedderburn. Sir Fletcher Norton, long "the cock of the walk," had just left the Northern circuit on being made Attorney General, and had given up an immense quantity of business to be struggled for. There were various speculations as to the manner in which it would be distributed among his juniors, who had long been impatient for his death or promotion — when the in-

* Ross. MSS.

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credible report was spread, that Mr. Wedderburn with his new silk gown meant to join the Northern circuit, in the hope of stepping into the lead. This was not believed till he actually made his appearance at York. The horror of the barristers was then much enhanced by the intelligence, that he was attended, as clerk, by the late clerk of Sir Fletcher Norton, well acquainted with every attorney north of Trent. He did not boldly set professional etiquette entirely at defiance, but in vain tried to justify himself by contending, "that never yet having gone any circuit, he could not be within the regulation against changing circuits — that every man called to the bar had a free right to choose a circuit — and that no attempt had ever before been made to limit the time within which the choice must be exercised." An extraordinary meeting of the Northern circuit bar was immediately called, when it was moved, that no member of it should hold a brief with the interloper. If this had been carried unanimously, he must have packed up his wig and his silk gown and instantly returned to London. He was saved by there being one dissentient, although one only. This was Wallace, afterwards Attorney General — then a hard-headed special pleader — who pretended to take the liberal side of the question, but was suspected of being sordidly actuated by a desire to promote his own interest — anticipating that Wedderburn's reputation must bring him briefs, and that he himself would always be retained as his junior.* The new silk gown was accordingly tried in several important causes, but though he could make an exceedingly good statement of the facts of the case, he was defective, from inexperience, in the examination of witnesses — on which the verdict often depends, much more than on the figures of rhetoric, — and, notwithstanding the cramming he underwent at consultation, he was evidently distressed when an important point of law unexpectedly arose during the trial. There was too much foundation for Jack

* Wedderburn himself told Lord Haddington that, finding the opposition made to him on the Northern circuit, "he challenged two of the senior counsel, and then there was an end of it;" but I do not find any other account of these challenges.

Lee's saying, circulated with much complacency — that "what little law Wedderburn took in at York had run through him before he got to Newcastle." In short, this bold manœuvre proved a failure, and after one or two years he gave up the circuit, under the pretence, that it interfered with his business in London, although Scott, afterwards Lord Eldon, and other Equity practitioners continued long after to attend the assizes.

He fails as a nisi prius leader.

In the court of Chancery, nevertheless, Wedderburn now took root and flourished. Here he was much more at home than in conducting *nisi prius* causes: the forms of proceeding were more analogous to those he had been accustomed to in Scotland, where facts were decided by the judges on written depositions, — and his superior knowledge of the civil law sometimes gave him a formidable advantage over his rivals.

His success in the Court of Chancery.

He still continued, occasionally, to frequent the theatre, and to mix with authors and actors in the Green Room, and he kept up a close correspondence with his absent literary friends. The following epistle, which is addressed to him by David Hume, gives a very entertaining view of French manners, and of the intoxicating effect upon the philosopher of the incense offered up to him by the Parisians: —

"My dear Sir,

"I believe I shall write you a very short letter, and yet have a great deal to say. I have not absolutely leisure to look about me: what between business and company, what between receiving and returning civilities, between the commerce of the great and the learned, it is scarce possible for me to think of an absent friend." . . .

Letter to him from David Hume.

[After enumerating some books he had purchased for Mr. W. and forwarded to London, he proceeds.]

"I reconcile myself daily to this course of life, and nothing leads more to familiarise me to a scene so different from that to which I had so long been accustomed, than the amiable manners and the cordial friendship of the family with whom I live. I find, likewise, the use of the French tongue gradually returns to me, though I am still somewhat awkward in returning a compliment. The scene which passed to-day really pleased without embarrassing

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me. I attended Lord Hertford to Versailles in order to be presented to the Dauphiness and the young Princes, the only part of the royal family whom we had not yet seen. When I was presented to the Duc de Berry, a child of ten years of age, he said to me, 'Monsieur, vous avez beaucoup de réputation dans ce pays-ci: votre nom m'est tres-bien connu; et c'est avec beaucoup de plaisir que je vous vois.' Immediately upon which his brother the Comte de Provence, who is two years younger, advanced to me and said, with great presence of mind, 'Monsieur, 'Il y a longtemps que vous étes attendu dans ce pays-ci avec beaucoup d'impatience: je compte avoir bien du plaisir quand je pourrai lire votre belle histoire.' But what is more remarkable, when we were carry'd to make our bows to the Comte d'Artois, who is about five years of age, and to a young Madame of between two and three, the infant Prince likewise advanced to me in order to make me his harangue, in which, though it was not very distinct, I heard him mumble the word *Histoire*, and some other terms of panegyric. With him ended the civilities of the royal family of France towards me; and I may say it did not end till their power of speech failed them: for the Princess was too young to be able to articulate a compliment. You may see, by this instance alone, what you could not fail to remark in many other instances, how much greater honour is paid to Letters in France than in England. I do not mean with regard to me alone, whom some factious barbarians, under the appellation of Whigs, are fond to decry; but with regard to every other person. And the effects are visible by the different state of Letters in the two countries.

"I am, dear Wedderburn,

"Your's sincerely,

"David Hume.

"Paris, 23d Nov. 1763.

"P.S. I daily reconcile myself more to this place, and expect soon to be a Parisian. I have so often changed my places of abode, that I am come to think that, as far as regards happiness, there is no great difference among them. But yet, if there is a preference to be given, this city seems entitled to it." *

Wedderburn be-

Notwithstanding Wedderburn's success as an equity counsel, he looked to politics as his main stay; and strange to

* Rossl. MSS.

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1764–1768.

relate — incredible it must long have appeared to his old associates, and particularly to David Hume, who was talking with such bitter contempt of the Whigs — he now became a flaming patriot. He perceived the imbecility and caducity of the several administrations which followed the downfal of Lord Bute, and instead of attaching himself to any of them, he thought it better policy to go into hot opposition — to censure the measures which were taken respecting the taxation of America, and to insist that the constitution was violated by the persecution of Wilkes, — all whose abuse of Scotland and Scotsmen he now charitably forgave. Still his policy was only "*reculer pour mieux sauter.*" When George Grenville had quarrelled with the Court, Wedderburn at times affected to consider him as his leader, and he occasionally coquetted with Lord Chatham; but he evidently looked all along to a reconciliation with the "King's friends" on the first favourable opportunity; his present patriotism was, by showing his consequence, to raise his price, and he cautiously abstained from entering into any party engagement which might embarrass him or expose him to the charge of private treachery, when the fit moment for his going over should arrive.*

comes a patriot.

As is usually the case, his reputation as a debater rose very much when, instead of speaking or being silent according to the orders of a leader, and if called upon to defend an abuse he could only urge the topics prescribed to him, he was at liberty to assail the government when and how he chose. The *éclat* he acquired in St. Stephen's operated very beneficially on his bar practice. Though opposed to such a formidable rival as Thurlow, he had a great ascendancy in the Court of Chancery; he was employed in almost every Scotch

In opposition his reputation as a debater rises.

* We shall never know the steps by which from being an Ultra-Tory he became "a Whig and something more." Parliamentary reporting had ceased, or rather had been suppressed, at this time, and we know nothing of parliamentary proceedings except from private letters. In a letter from Mr. Cooke to Lord Chatham, dated 17 Dec. 1765, giving an account of a debate on the right to tax America, the writer says, — "Mr. Wedderburn acted like a true Scotchman," which, in the language of that day, meant *most basely*; and it would appear that even then he had hopes of pleasing the court by subserviency. He was still member for Rothsay.

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A.D. 1769.

Wedderburn counsel for the respondent in the Douglas cause.

appeal at the bar of the House of Lords, and he was the decided favourite at the Cockpit. He was counsel for the respondent in the famous Douglas cause, which was admirably adapted to his peculiar powers. Accordingly he here outshone all his competitors. Charles Fox often declared that "Wedderburn's speech on this occasion was the very best he ever heard on any subject;" and Horace Walpole, in his Memoirs of the Reign of George III., says, "Mr. Alexander Wedderburn (for the Hamiltons) spoke with greater applause than was almost ever known."* But not a scrap of his speech is extant, and we read of it as of a great performance by Garrick on the stage, remembered only by the admiration which it excited. The judgment of the House of Lords, it is well known, was against him — the decree of the Court of Session declaring the claimant to be spurious, being reversed — with some strong observations from law lords on the conduct of Andrew Stuart, the agent for the Duke of Hamilton, the respondent. There is preserved to us a letter to this gentleman from Wedderburn, very creditable to the writer, as it shows more heartiness and disregard of giving offence to those who might injure him than he usually indulged in: —

His letter to Andrew Stuart.

"My dear Stuart,

"I have read over the newspaper account of the Chancellor's† speech in the Douglas cause, which, in my opinion, he has more reason to be offended with than you have. It is the publication of one who had only capacity enough to retain those parts of the speech which I am persuaded the Chancellor would wish to be least remembered.‡ Nothing ever was worse founded than any aspersions upon your conduct in that cause, which in its whole progress was carried on, not only with the strictest probity on your part, but with a candour and delicacy that very few men would have thought themselves bound to observe. I have more than once thought, in the course of the inquiry, that you acted with too nice a sense of honour in a contention with people who made no scruple to take every advantage, though I respected the principle on which it proceeded. It was impossible you could escape abuse (let your conduct be ever so correct) at a time when,

* p. 302.

† Lord Camden.

‡ This is no doubt, malice prepense; but I once heard a Puisne Judge say to Lord Chief Justice Tenterden with great *naïveté*, "What nonsense the newspapers do make you talk!"

for much less interests, all characters are daily traduced, and personal invective is become a standing mode of argument. I am sorry, upon their own account, that it should be adopted by those who having felt what calumny is should be cautious how they give a sanction to it. Upon your account I feel very little anxiety; because, besides the testimony of your own mind, you have the satisfaction to know that all those who have been eye-witnesses of your conduct, not only justify it, but applaud it; that of the many judicious people who have studied the cause, very few indeed join in the reflections upon you; and that even your adversaries do your conduct that justice in private, which in public they have sacrificed to the interests of their cause. They have succeeded, and the decision must compel your submission; but assent can only flow from conviction; and the opinion I had entertained of the cause is not altered by any reasoning I have heard upon it. My ideas of justice are a little perplexed by the decision; and I consider it as a striking example that no cause is certain or desperate. You will probably be gone from London before I return to it, and I could not help writing to you as I shall not have an opportunity for some time of meeting you. Adieu, my dear Stuart, and believe me ever

"Yours most sincerely,

"A. WEDDERBURN." *

His forensic reputation now repaid what it had borrowed from his parliamentary, and his weight in the House of Commons was much enhanced. He expected some tempting offer from the court; but none being made, he resolved,—keeping himself disentangled from any express party engagements,—to go for a season into the hottest opposition.

* There is a curious letter on the subject of the Douglas cause from David Hume to Dr. Blair — to be accounted for from the philosopher's friendship for Wedderburn and Stuart.

28 March, 1769.

"I was struck with a very sensible indignation at the decision of the Douglas cause, though I foresaw it for some time. It was abominable with regard to poor Andrew Stuart, who had conducted that cause with singular ability and integrity, and was at last exposed to reproach, which unfortunately never can be wiped off. For the cause, though not in the least intricate, is so complicated that it never will be reverenced by the public, who are besides perfectly pleased with the sentence, being swayed by compassion and a few popular topics. To one who understands the cause as I do, nothing could appear more scandalous than the pleadings of the two law lords. Such gross misrepresentation, such impudent assertions, such groundless imputations, never came from that place. But all was good enough for their audience, who, bating their quality, are most of them little better than their brethren the Wilkites in the streets."

CHAPTER CLXV.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL HE WAS MADE SOLICITOR GENERAL.

CHAP. CLXV.

March, 1769. He loses his seat in the House of Commons for Richmond by supporting Wilkes.

SOON after came on the grand debate in the House of Commons on the resolutions for declaring Mr. Wilkes disqualified to be re-elected a member of the House of Commons in consequence of his expulsion, and for seating Luttrell as member for Middlesex, although he had only 296 votes against 1143. Wedderburn, taking the popular side, seems to have made an admirable speech. The Parliamentary History does not even notice his name as having spoken; but, according to Sir Henry Cavendish, he reasoned thus:— "The question comes to this, was the person for whom the majority of electors voted, legally disqualified? He is, we are told, by a vote of this house. But has such a vote the force of law? that is the point. If it has not, it may control our own proceedings, but it will not have the effect that the votes given for Mr. Wilkes are thrown away. The position laid down is that a vote of the House of Commons is law. My learned friend says, that it imports a common law disqualification. If it does, by the usage of Parliament, as part of the common law, you can prove it to me; you can show me precedents, you can quote authorities, or succeed by deductions of reason; but in support of such a monstrous proposition we have had neither precedents, nor authorities, nor arguments." *

Earl Temple, in giving Lord Chatham a brief abstract of the debate, says, "Not a shadow of argument in favour of the disqualification! Wedderburn made a most excellent speech with us. It has cost his seat in Parliament, which he has this day vacated in consequence of Sir Lawrence Dun-

* Cavendish Deb. i. 352.

das's reproaches and desire, from what I think too generous a delicacy."*

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He takes the Chiltern Hundreds.

Representing the close borough of Richmond, for which he had been returned by its owner, as a Tory, at the general election in April, 1768,—according to the notions which prevailed, and were almost invariably acted upon in the good old times, he would have incurred great disgrace if he had retained his seat. Next morning he applied for and obtained the Chiltern Hundreds.† Now he was looked upon as a martyr, although in reality not more of a Wilkite than Wilkes himself. A dinner was given to him at the Thatched House Tavern by the Opposition leaders, including George Grenville, Burke, Lord John Cavendish, Tommy Townshend, Lord Clive, Lord George Sackville, Sir George Savile, Alderman Beckford, and Colonel Barré. They drank his health with three times three, under the title of "THE STEWARD OF THE CHILTERN HUNDREDS;" and he made a very inflammatory reply, denouncing in no measured terms the usurpation of the rights of the people by their own representatives, and concluding with this oath of abjuration suitably taken by him on receiving an office from the Crown, for which he had vacated his seat: "I do from my soul denounce, detest, and abjure as unconstitutional and illegal, that damnable doctrine and position, that a resolution of the House of Commons can make, alter, suspend, abrogate, or annihilate the law of the land." Whereupon he kissed the bottle. Various other toasts were given to testify the attachment of the meeting to the cause which Wedderburn had so nobly defended; such as —"The rights of electors!" "The law of the land!" "The immortal memory of Lord Chief Justice Holt!"—all introduced by speeches eulogising the new patriot's exertions and his sacrifices.‡ It is said that Wilkes himself became a little jealous of this "North Briton," for though not much of a

Dinner given to him by the Opposition.

Toasts and speeches.

* Chatham Correspondence.

† A new writ was moved for Richmond, 9th May, 1769. 32 Com. Jour. 452.

‡ Lord Temple, giving an account of the dinner at the Thatched House, says:—"Every thing passed most miraculously well, and the whole meeting appeared to be like brothers united in one great constitutional cause."—*Chatham Correspondence.*

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Wilkite, he would not like to have been superseded as the most notorious public man of the day. Wedderburn did begin to agitate in good earnest; and while he was out of Parliament went about making harangues, and supporting violent resolutions against the Government, particularly at a public meeting at York.*

He agitates at public meetings.

Jan. 9. 1770. He is returned by Lord Clive for Bishops Castle.

The interval, however, was very short; and at the commencement of the next session, he again took his seat in the House of Commons, having been returned for Bishops Castle by Lord Clive †, who was thanked by George Grenville and others, for this proof of his regard for the Constitution. ‡

* "Mr. Wedderburn exerted himself as much in the defence of Mr. Wilkes as he ever did in his condemnation; and, at length, to convince such as might not probably be persuaded that he was in earnest, he made a public tour throughout the several ridings, towns, and districts in the extensive county of York, to warn them of the dangers which they and all the freeholders of Great Britain were threatened on account of the late unconstitutional corrupt decisions of the House of Commons in the affair of the Middlesex election. He did not hesitate to reprobate in all its parts the Court system, and he pursued the same line of conduct uniformly till the death of Mr. Grenville." — *Public Characters*, p. 68. "He subsequently supported the Administration through thick and thin in every measure; but on the motion for rescinding the resolution on the Middlesex election — when he absented himself, or, as some say, divided against the minister." — *Ib.* 72.

"Westcombe, 10th May, 1769.

† "Sir, — I am sorry that any personal or party motives should have deprived you of that seat in parliament which you filled with so much honour and unbiassed ability: if another seat be acceptable I have one at your service, in which you will at all times be at liberty to exert your talents upon your own principles. — I am, with sentiments of the greatest esteem, Sir, your most obedient humble servant,

"Clive.

"To Alexr. Wedderburn, Esq." [1]

‡ The following is a copy of George Grenville's letter to Lord Clive thanking him for offering to return Wedderburn for Bishops Castle: —

"My dear Lord, Bolton Street, May 10. 1769.

"I have just this moment received the honour of your letter while Mr. Wedderburn was with me, to whom I have executed your commission. He is extremely sensible of this great mark of your Lordship's esteem and regard, and still more so of the honourable manner in which you have made the proposition for rechoosing him into Parliament. . . . . If any thing could give me a higher opinion of your character and conduct than that which I entertained before, it would be your behaviour on this occasion."

Lord Temple, writing a few days after to his cousin, Lord Chatham, says, "A seat is already found and fixed for Wedderburn; but it is a great secret, and more offers than one have been made to him. Beckford and Trecothick proposed to him the freedom of the city in a gold box, and Lord George Caven-

[1] Rosl. MSS.

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Now came on one of the most tremendous party struggles recorded in our annals. Lord Chatham, whose public career was supposed to have been terminated in the loss of his intellects, re-appeared with all his pristine vigour, animated by the most furious indignation against the disqualification of Wilkes; Lord Camden was deprived of the Great Seal for supporting him; and Charles Yorke was supposed to have put an end to his existence three days after he was prevailed upon to receive it. Wedderburn must have cast a longing glance at the bauble, and if it had been then offered to him I am afraid he would not have rejected it, nor shown any remorse for his perfidy. But in the absence of an overture from the Court he deemed it his best course to continue to act with apparent zeal on the popular side.

Jan. 25. 1770. Wedderburn pitted against Lord North.

Accordingly, in the Committee on "the State of the Nation," Mr. Dowdswell having moved a resolution (which he said he was to follow up by some others, to be afterwards stated), "That in matters of elections this House is bound to judge according to the law of the land;" and Lord North, after complaining that the other proposed resolutions were not brought forward at the same time, having moved that the motion be amended by adding these words, "and that the judgment of this House, declaring John Wilkes, Esquire, disqualified to sit in this present Parliament, was agreeable to the said law of the land, and fully authorised by the law and custom of Parliament," — "Mr. Wedderburn observed, that Lord North, with respect to his motion, acted like an old woman, who being examined as a witness, and asked her name, said, 'she would not tell it till she knew what questions were to follow;' he said he was glad the noble lord had nothing to object to the question, except that it was unnecessary; but he hoped that objections of another kind against the amendment were so manifest, as that no gentleman would join him in voting for it." This is the whole

dish, at the dinner at the Thatched House Tavern, toasted "The Steward of the Chiltern Hundreds." — *Chatham Correspondence.*

A vacancy was created in Bishops Castle by the retirement of his Lordship's cousin, William Clive. 32 Com. Journ. 457. — *Gentleman's Magazine*, vol. xl. p. 47.

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report of a speech that lasted above two hours, and we are lucky in having a little inkling of the points which he made; for sometimes we have only such general notices as the following of his most brilliant efforts. "Mr. Wedderburn was excessively great this evening;" or, "the Solicitor General Wedderburn, in answer to Mr. Fox, defended the administration in a fine vein of oratory." Lord North's amendment was carried by a majority of 224 to 180. At the risk of commitment to Newgate for breach of privilege, a list of the minority was printed and circulated, with Wedderburn's name in it, along with those of Barré, Burke, George Grenville, Lord George Sackville, and Lord John Cavendish.*

Jan. 31. 1770.

On a subsequent day, in the debate on Mr. Dowdswell's motion, "That by the law of the land, and the known law and usage of Parliament, no person eligible by common right can be incapacitated by vote or resolution of this House, but by Act of Parliament only," Wedderburn again spoke immediately after Lord North, attacking him very vehemently, and saying, "When this committee sat last, the conclusion that it came to concerning this question was in every respect strange and unnatural. The resolution now moved for will put all right. The noble Lord asks, 'Will the House of Commons censure and disgrace itself?' Let me ask, in my turn, 'Will the House of Commons compose the minds of the people? will they recover the good opinion and confidence of those whom some gentlemen have been pleased to call the *rabble*, the *base-born*, the *scum of the earth?*'" †

March 15. 1770. Wedderburn's speech on the motion

The report of his speech in the next debate on this subject I suspect was prepared by himself, and it is certainly calculated to give us a high opinion of his powers. The city of London had presented to the King an address, framed in

* 16 Parl. Hist. 797.

† This is all that is set down for him in the report, and he is lucky in being so noticed; for the wearied reporter goes on to say, "Sir W. Blackstone opposed the resolution, and was answered by Mr. Edmund Burke. Mr. Charles Fox spoke in answer to Mr. Burke; but the topic has been so exhausted, that their speeches would neither contain any thing new, nor exhibit any thing in a new light."—16 Parl. Hist. 803.

very violent language, complaining of the proceedings of the House of Commons against Mr. Wilkes, and had received in answer a very sharp rebuke from his Majesty. A motion was now made by a supporter of the government for a copy of the address, with a view to institute proceedings against the citizens of London for a breach of privilege. This was strongly resisted by the Opposition leaders, who severely animadverted on the answer which the King had been advised to return to the address. Lord North having thereupon avowed that he was the adviser of the answer, and responsible for it, and declared that nothing should deter him from inquiry into the conduct of others where, as in this case, inquiry appeared of utility to the public, Mr. Wedderburn is said to have spoken as follows: "Sir, if the issue of this debate regarded the responsibility* of the minister only, and was not of infinite importance to the kingdom at large, I should be one of the first to approve the candour of the noble lord who spoke last, and to own, that if he does not possess more wisdom than his predecessor, he at least shows more manliness and more probity in publicly acknowledging himself the adviser of the answer to the City remonstrance. But, Sir, it is not the responsibility of a minister which is now under consideration, but the inexpediency, the injustice, of censuring any part of the people for the exercise of a right which is warranted by the Constitution, which is supported by the dictates of reason, the authority of precedents, and the positive declaration of our laws. Our sole consideration is, simply, whether the people have, or have not, a right to petition; whether they are, or are not, legally authorised to lay their grievances before the throne, whenever they imagine themselves oppressed; and whether all prosecution for the exercise of that right is not prohibited by the Bill of Rights? Sir, the loudest advocate for the motion before the House will not pretend to deny the right of the people to petition, nor pretend to deny that they are wholly exempted from judicial censure on that account. Among the many bless-

For a copy of the London petition.

His panegyric on the liberty of the press.

* Wedderburn had not revised the "proof," for this word is misprinted "ostensibility."

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ings arising to the kingdom from the glorious Revolution, the privilege of complaining to the throne without the danger of punishment, is one of the noblest. The people, in this respect, are the sole judges of the necessity for petitioning: it is as much a part of their prerogative, if I may so express myself, as it is a part of the royal prerogative to assemble parliaments, or to exercise any other power warranted by the Constitution. I must ask, then, with what shadow of propriety, with what colour of reason, we arrogate a liberty of examining their proceedings? How do we presume to fly in the face of the law, and confidently assert that they shall be punished for what the law says we shall not examine? If this is our idea of reason, our conception of justice, let us, for the future, be distinguished for inconsistency and violence. Even admitting, Sir, that on the present occasion the people have been mistaken, that they have erred, that they have, in reality, no grievances to complain of, and that the manner of their remonstrance is as disrespectful as the matter of it is unjust; still, Sir, as the law positively pronounces on their right of petitioning, and their consequent exemption from prosecution, we are precluded from every inquiry into their conduct. They may be indiscreet, they may be warm, they may be turbulent: but let not us be rash, violent, and arbitrary. Let us not, while we are so nicely attentive to the errors of others, rush into palpable illegalities ourselves. Our power is great, but the power of the law is much greater. When you have got a copy of the petition, the petitioners may defy you.—For this reason I oppose the motion. I cannot consent that our love for equity should make us inequitable, that our regard for peace should lead us to spread the flames of discord through the land, or that our solicitude for the safety of the
shall vindicate our stabbing that constitution to
Remember, Sir, that one of the capital blemishes
L's reign was punishing the seven bishops for
Similar causes must always be productive of
:ts. We are yet safe; it is yet in possibility to
; whereas, if we proceed from violence to vio-

lence, if we go on exercising our power against the sense of our conviction, and sacrifice our honesty to gratify the malignity of our resentment, the consequences must be dreadful in the end. The people may be injured for a time, but they will prefer annihilation to chains: universal anarchy must ensue, and, as the poet forcibly expresses,

"Darkness be the burier of the dead!" †

March 5. 1770.

He takes part with the Americans.

On Lord North's motion for a partial repeal of the American Revenue Act of 1767, imposing the tea duty, Wedderburn made a violent harangue against the Colonial policy of the Government:—"If," said he, "this is considered as a measure calculated to pacify America, it is an extremely weak and idle one: it is one step further in that system of contradiction which has obtained with regard to the colonies from 1766 to the present day. After all the time that has elapsed no plan has been adopted, no system thought of; and the session is to pass over with only a further instance of contradiction. I heard with infinite concern the observation of the gallant general (Conway), 'that to tax America is impolitic and unjust, but that it was one of the latent powers vested in the government. What, Sir, declare that you have a right, and at the same time declare that the exercise of it would be impolitic and unjust!"†

Wedderburn was equally truculent in supporting Mr. Burke's motion for an inquiry into the causes of the late disturbances in America. He said,—"It is the continued system of contradiction and absurdity in government that has produced the melancholy situation in which we now stand. But, says the noble lord, 'Look forward and see what we shall next do for America.' This House must interfere and provide for the future government of America, or America is lost for ever. How long are we to wait? When nothing offers itself but despair; when nothing is offered to us but professions, both in the speech from the throne and in the language, or rather in the significant silence, of Ministers, Parliament must trace the

* 16 Parl. Hist. 881. † Cavendish Deb. 498.

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evil to its source, and if you find matter for punishment, you must punish."

Lord North in answer said,—"This speech might raise the reputation of the learned gentleman as an orator, but would not add to his character for veracity."*

March 22. 1770. His lucky quotation in answering the Attorney General De Grey.

When Wedderburn next addressed the House he acquired applause by showing his familiarity with Shakespeare. Indeed, in all my reading and hearing of parliamentary debates, I do not recollect a more felicitous quotation. George Grenville, now leader of the Opposition, having brought forward his famous bill for the trial of controverted elections†, it was opposed by Lord North and the Government,—and De Grey, the Attorney General, made a long speech against its dangerous innovations, thus concluding:—"In short, Sir, although there no doubt have hitherto been irregularities and even abuses while the House retained to itself its constitutional power of deciding election petitions, it is better to endure the evils of which we know the extent, than in a sudden start of disgust and humoursome passion, 'fly to others which we know not of.'"

Wedderburn, rising immediately after, continued Hamlet's soliloquy:—

> "And thus the native hue of resolution
> Is sicklied o'er with the pale cast of thought;
> And enterprises of great pith and moment,
> With this regard, their currents turn awry,
> And lose the name of action."

"The opposition to this bill by the Government," he added, "I consider most disgraceful. They do not deny the evils of the existing system to be as great as we have described them, and they offer no other remedy. In resisting it they make no distinct objection to it; their only resource is blindly to address themselves to our fears. They acknowledge the danger, they admit that we approach the brink of the precipice, and they would rather see us dashed to pieces among

* 2 Cavendish Deb. 28.

† Wedderburn had been directed by the House, along with George Grenville, "to prepare and bring in the same" (32 Com. Journ. 760.); but he had only revised it, and corrected some of the legal phraseology.

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His defence of the Grenville Act.

rocks or swallowed in the cataract below, than that we should turn into a new path for safety. Wherever reason, justice, honour point the way, there the most ungenerous among them, like my learned and honourable friend the Attorney General, set up bugbears, and phantoms, and chimeras dire. They would frighten us with dangers, not only 'which we know not of,' but which they themselves cannot describe or imagine." The report goes on to say, that "he then turned to Lord North and his friends, and in a strain of irony apologised for their neglect of the business of legislation, as they were devoting themselves day and night to their executive functions, in conducting our foreign and colonial policy, although it had unhappily turned out, in spite of their statesmanlike efforts, that France had been allowed treacherously to add Corsica to her dominions, and that our transatlantic colonies were on the verge of rebellion."* The bill was carried by a majority of 185 to 123, and was long celebrated as an absolute piece of perfection, but afterwards fell almost into as great disrepute as the ancient practice of deciding elections in the House by a ministerial majority.

May 8. 1770. His speech in support of Mr. Burke's resolutions for conciliating America.

Wedderburn, before the close of the session, had an opportunity, which he very zealously improved, of attacking the whole system which had been pursued for some years with respect to America. This was upon Mr. Burke's first great attempt to save the empire from dismemberment, by bringing forward the celebrated Resolutions, explaining the causes of the discontents in the colonies, which began to be so alarming, and the measures of conciliation, which ought to be resorted to. He rose late in the debate, and we have a very imperfect report of his speech; but it seems to have been very elaborate and effective. Forgetting the changeable propensity which he himself had already exhibited, and not anticipating the sudden wheel which he himself was destined very speedily to exhibit, he very daringly began with taunting Lord Clare for having illustrated the ease with which great statesmen might reconcile inconsisten-

* 16 Parl. Hist. 921.

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cies between opinion and conduct, by warmly supporting the American Stamp Act,—then taking office under a minister who repealed it,—and now again standing up for the right to tax America. He asserted that such had been the folly of late measures respecting America, that they had united all thinking and honest men of all parties in condemning them. He went on to declare, that by these measures the American colonies were no longer part of the British dominions—more than Calais, which was once a British province. He concluded by inveighing against the appointment of a third Secretary of State for the Colonies, insisting that the minister placed at the head of that department was wholly unfit for it, and that the Resolutions ought to be supported, as they must lead to his removal.

He is answered by Lord North.

The reporter says, that "Lord North followed, and took up some expressions which Mr. Wedderburn had used in high terms, and returned a flat contradiction to them: his Lordship then came to the ground of answering the several matters of charge against the ministry, article by article, and said as much as could be for them."* This was the last of a series of personal conflicts between the minister and the aspiring Opposition lawyer. They probably soon after came to a secret understanding that they were as quickly as possible to be friends; but it was necessary to wait for an opening in the law before this object could be accomplished, and the year 1770 expired without any legal dignitary dying or resigning.

Approximation between them.

Meanwhile, a new session of Parliament began in November, and Wedderburn still professed to belong to the Opposition; but he confined himself in debate to the discussion of legal questions. A motion being made to take away the power of the Attorney General to file *ex-officio* informations,—that he might still appear to be on the popular side he supported it, although he must have been well aware that the same power belonged to the public prosecutor in his own country with respect to all offences whatsoever, and that the

* 16 Parl. Hist. 1009.

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Wedderburn censures the power of the Attorney General to file criminal informations for libel.

system had there worked most beneficially. Nevertheless, he found it convenient to say, "It cannot be denied, that the proposed alteration will be attended with possible and even probable advantages, and the possibility, much more the probability, of advantage is a sufficient ground for change. If our ancestors had been so tenacious of old institutions, what would have become of our liberties? When reason and the principles of the Constitution dictate reformation, must we be deterred by mere names? The unlimited and discretionary power of prosecuting is not to be endured in a free state. A grand jury examines witnesses and rejects the bill, if it seems to be founded on injustice, malice, or oppression. The same process holds where an information is granted in the King's Bench. The party accused is there heard, and if he can produce any extenuating circumstances, he is never brought to trial. These things are not done in a corner, and judges, from a view to their own character, act with gravity and circumspection. Why is not the Attorney General's power circumscribed within the same limits? Need I say more to prove that this power ought to be abolished or modified?" *

Dec. 6. 1770. His argument in support of the rights of juries in cases of libel.

But Wedderburn's Opposition career in the House of Commons was now drawing to a close. The last oration delivered by him, standing on the left hand of the Speaker, was in the debate on Serjeant Glynn's motion respecting the administration of criminal justice and Lord Mansfield's direction to juries on the trials for the publication of Junius's Letters. He thus boldly began:—"Sir, it is with reluctance I trouble the house at so late an hour of the night. But the importance of the question will plead my excuse. My silence might be branded with the odious imputation of *trimming*; and I would have it understood, that when the Constitution is in danger I always take a decided part, and scorn the mean subterfuge of an invidious neutrality. Sir, it is not that I do not perceive the difficulties with which I am surrounded. I see the narrow path on which I stand, and the rocks and pre-

* 16 St. Tr. 1147. 1188.

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cipices which threaten on either side. If I lean to the inquiry, I shall be termed a child of faction: if I incline to the opposite side, I shall be denounced as a slave to the court. In this dilemma how shall I act? As every honest man ought. Regardless of consequences, I will follow the dictates of conscience; and if I cannot satisfy others, at least satisfy my own mind." He then gives it as his opinion that, according to precedent, juries are confined to the question, whether the alleged libel was published by the defendant, but that by a new law, the power of deciding upon the general guilt or innocence of the defendant ought to be conferred upon them. "Sir," said he, "while matters continue on their present footing, while judges think the intention a matter of law cognizable only by them, and juries imagine this to be an encroachment on their jurisdiction, they will be eternally at variance. A constant struggle for superiority will subsist, and justice, being placed in the middle between them, will be mangled and torn in pieces. Acted upon by two forces in opposite directions, it will share the fate of criminals, whose limbs are tied to the tails of wild horses. Juries thinking law and liberty to be at stake, and judges standing up for their own authority, and what they consider the cause of order, neither will give up the contest till the land become one scene of anarchy and misrule. Indeed, who does not see that this is already the case? The most audacious libellers cannot be convicted. Secure in the opposition of juries, they laugh at all the terrors of *ex-officio* informations. The Attorney General with all his power is despised. Like an old worn-out scarecrow in a field, his head is made a roosting-place, or something worse, by these obscene birds. It is time for us to reconcile the practice of the law with the principles of the Constitution. Juries seem to me not only the proper but the sole judges of the intention — of the innocence or malice of a libel, because it is really and essentially a matter of fact and not of law. It depends solely on the opinion which is entertained of the libel by the public. What passed in the Roman Senate for polite raillery, would in this house be deemed a gross affront, and

perhaps lead to bloodshed. What Roman virtue called 'Attic eloquence,' modern honour would construe 'rude Billingsgate.' Libel is founded entirely on public opinion. There is no other standard by which it can be measured or ascertained. Who then so proper as the people to determine the point? If juries are to be confined to the single fact of publication, instead of leaving them only this shadow of power, would it not be better to annihilate them entirely? What then will become of our envied constitution? This main prop being removed, the whole fabric will tumble to the ground, and crush us under its disjointed fragments. Sir, in all our legal system, there is nothing that can boast a preference to the institution of juries. The plan is great, noble, and comprehensive, and well worthy of its royal founder. Judges may err, judges may be corrupt. Their minds may be warped by interest, passion, and prejudice. But a jury is not liable to the same misleading influences. Twelve men of the vicinage, chosen as they are, can have no bias — no motive to show favour or malice to either party. They must find a verdict according to evidence and conscience. Ask a foreigner what are his ideas of English liberty? He will tell you, with uplifted hands and a look of admiration, that it consists in the right which every Englishman has of being tried by his equals. But where is the propriety of any panegyric, if the jury are only to try the most insignificant part of a cause, and leave the rest to the judge, who is not the equal of the accused? Were the proposed scheme adopted, the present ferment would subside, and juries would spontaneously give a check to the licentiousness of the press. I think no restrictions necessary. I am far from adopting the creed of my honourable and learned friend the Attorney General, 'that if we were less learned we should be better men.' I hold, on the contrary, that the diffusion of learning, by the liberty of the press, is necessary to public liberty and public morality. Like all the great and powerful nations that ever existed, we are tending towards effeminacy. What then would become of us without the press? Not to speak of the rational and elegant amusements

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He again eulogizes the liberty of the press.

which it affords, we owe to it all the spirit which remains in the nation. Were an *imprimatur* clapped upon it, and a licenser appointed, we should soon come to the last stage of barbarism. We should be worse than Turks and infidels,—the setting of the sun of science being much more gloomy and dismal than the dark hour which precedes its rise. Let us then guard the liberty of the press as watchfully as the dragon did the Hesperian fruit. Next to the privileges of this house and the rights of juries, it is the main prop of the Constitution. Nay, without it I fear the other two would prove very ineffectual. Though it be sometimes attended with inconveniences, would you abolish it? According to this reasoning, what would become of the greatest blessings of society? None of them come pure and unmixed. Religion itself is apt to degenerate into enthusiasm or superstition. Must we, therefore, exterminate Christianity? God forbid! Why then be so severe on the liberty of the press? If it poisons the minds of the people, it likewise administers an antidote. The same waggons, the same flies and stages that carry down into the country the lies of faction, carry down also the counter-statements of the Ministry. If any one is bit by the tarantula of the Opposition, he is cured by the music of the Court."*

Wedderburn at St. Helen's.

There is a tradition that Wedderburn had now (in parliamentary slang) "dropped down to St. Helen's, lying there at single anchor;" or, in other words, — that he sat in the neutral row, below the gangway, on the Opposition side of the house, ready to go over to the Treasury bench. His patriotism had all along been regarded with suspicion. "In vain," wrote Junius to the Duke of Grafton, "would he have looked round him for another character so consummate as yours: — Lord Mansfield shrinks from his principles; his ideas of government, perhaps, go further than your own, but his heart disgraces the theory of his understanding: Charles Fox is yet in blossom; *and as for Wedderburn, there*

* 16 Parl. Hist. 1294. Lord Chatham, in reference to this speech, wrote to Calcraft: — "Mr. Wedderburn, I hear, did, upon the matter of juries' right to judge, speak openly, and like a man. I shall ever truly honour him." — *Chat. Corr.* iv. 46.

is something about him which even treachery cannot trust." This great Unknown, on another occasion, pretended to have fully appreciated the character of our political *Condottiere;* "Let us profit by the assistance of such men while they are with us; and place them, if it be possible, in the post of danger, to prevent desertion. The wary Wedderburn, the pompous Suffolk, never threw away the scabbard, nor ever went upon a forlorn hope: they always treated the King's servants as men with whom, some time or other, they might possibly be in friendship."

His strong desire to go over.

Wedderburn was now more desirous of taking place under the present Government on account of the death of George Grenville, with whom he would not enter into any positive engagement, but whose return to power he had considered not improbable. Lord North was not only a favourite with the King, but was gaining the confidence of the House of Commons, and of the nation; and those who should continue to stand out against the usurpation of the House of Commons in disqualifying Mr. Wilkes, and against the injustice of England in taxing America, seemed doomed to long years of hopeless exile from the Treasury bench.

Before making any direct overtures to the Government, he sounded the inclinations of the patron of the borough which he represented, and was greatly comforted by receiving from him the following answer, which must be allowed to be very creditable to the writer.

"Bath, 18th Nov. 1770.

"Dear Sir,

"If the receipt of your very obliging and confidential letter had not roused me, I doubt much whether I could have prevailed upon myself to put pen to paper, though I feel something within that tells me I shall at last overcome a disorder so very distressing to the mind and so degrading to human nature. Either the air or water of Bath agrees with me better than any place I have yet tried: yet still I am afraid a journey abroad must be undertaken before I can attain a perfect recovery of my health.

"Mr. Grenville's death, though long expected, affected me very deeply. Gratitude first bound me to him; afterwards, a more intimate connection gave me an opportunity of admiring his abilities

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and respecting his worth and integrity. The dissolution of our valuable friend has shipwrecked our hopes and expectations for the present; and my indisposition has not only made me indifferent to what passes in Parliament, but to the world in general. But if I can think for myself in such a situation, I wish to support that independence which will be approved of by my friends and by the public. My sentiments coincide entirely with yours in the present critical situation of affairs.

"Your delicacy towards me serves only to convince me of the propriety of my conduct in leaving you the absolute master of yourself in Parliament, subject to no control whatever but that of your own judgment; and I am happy in this opportunity of giving under my hand, what I have declared on all occasions by word of mouth.

"Your great and uncommon abilities must, sooner or later, conduct you to the first posts in this kingdom, and you may be assured, no man on earth wishes more to see your honour and your independency firmly established in this kingdom than,

"Dear Sir,

"Your affectionate friend and obliged servant,

"CLIVE." *

Lord Chatham tries to keep him true to Opposition.

Notwithstanding the general suspicion of Wedderburn's lubricity, so high at this time was his reputation for ability, and so valuable were his services considered to the party he should support, that while Lord North was looking for a favourable opportunity to enlist him in the Government ranks, Lord Chatham thought it worth while to make an effort to keep him true to the Liberal side, and with this view (knowing the man) addressed himself to his interest, and tried to do a job for him in the city. Eyre, the Recorder, had given mortal offence by refusing to read the famous "Remonstrance" to the King, or to attend at St. James's when it was presented. The Court of Common Council thereupon passed resolutions — That Mr. Recorder Eyre be no more employed in any city causes; that Serjeant Glyn (who had gained such applause in the Middlesex election) should be retained as their leading counsel,—and that the freedom of the city should be presented in a gold box to Mr. Dunning, (who

* Rossl. MSS.

when Solicitor General had defended in Parliament the right to petition and remonstrate). Lord Chatham wrote a letter, to be made public, in which, after praising these resolutions, he goes on to suggest that something should likewise be done for the patriotic Scot, who, notwithstanding his country, had made such sacrifices for liberty: "I could wish Mr. Wedderburn's merit to the cause of the Constitution not to be forgot. I think it is a species of injustice, if, on some proper occasion, it be not intended to show him that his spirited, disinterested conduct is felt as it deserves. I fear some mixture of narrow ideas, and local antipathy. To speak plain, nothing is more contrary to the public good than to retain the smallest grain of alienation or suspicion towards a Scotchman, renouncing and thoroughly resisting Scotch influences and despotism." *

The freedom of the city was actually voted to Wedderburn, but as the scheme of having him appointed to a city law office failed, and he was evidently cooling towards the popular cause, Lord Chatham thought that he might fix the waverer by personal attentions, — which many would then have preferred to place and power, — and proposed to call upon him, that they might together concert measures for the public good. This proposal was most embarrassing; it could not be directly declined without a discovery that a very different negotiation was pending; and as this negotiation might break off, it was essential for some time longer to have patriotism for a resource; yet the news of an interview with Lord Chatham, which would have been immediately known over all the clubs

* Chatham Correspondence.

To show the violence of the prejudice in London at this time against Scotsmen, Mr. Wedderburn used to relate the following anecdote: — "John Home, elated by the success of DOUGLAS, had written another tragedy, called RIVINE, the name of the heroine being taken from a fragment of Ossian. Garrick, afraid that there could be no chance for the combination of a Scotch writer and a Scotch subject, changed the title of the piece to THE FATAL DISCOVERY, and got a young English gentleman from Oxford to father it. Under this disguise it drew crowded houses;—whereupon the real author incautiously discovered himself. It could not now be damned, but after languishing a few nights it was withdrawn." This is a good pendant to the authentic story of Sir John Owen being rapturously applauded in the House of Commons while he was supposed to be a country gentleman, but being coughed down when in the middle of his speech it was discovered that he was a lawyer.

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in London, might have caused his absolute proscription at St. James's.

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The communication with the old patriot was carried on through his bosom friend, Calcraft. To him Wedderburn wrote a very artful letter, expressing his deep sense of the honour to be conferred upon him, and his eager impatience for the proposed meeting; but suggesting some difficulties as to time and place, and proposing that "on the first fitting opportunity he should wait upon the illustrious statesman who had vouchsafed to notice his exertions for the public good." Lord Chatham wrote back the following letter, to be read by Calcraft to Wedderburn: "If you will be so good as to answer Mr. Wedderburn's letter, as having communicated it to me, and if you please to express in my name the sense I have of his most obliging manner of meeting my earnest wishes to have an opportunity of seeing him and exchanging sentiments, as far as he will give leave, with a person for whose handsome conduct and great abilities I have a very real and high esteem."* On various pretences the interview was postponed, and Lord Chatham and his friends plainly saw that Wedderburn was for ever lost to them. Lord Camden wrote to his great leader, "The opinion is universal that Wedderburn is in the act of negotiating, or open to it." These rumours were much strengthened by the news that De Grey, the Attorney General, was immediately to be made Chief Justice of the Common Pleas, and that Thurlow, Solicitor General, was to become Attorney, — so that the Solicitor Generalship would be vacant. Parliament had been adjourned for the Christmas holidays on the 20th of December to the 25th of January. On this very day the London Gazette announced that "Alexander Wedderburn, Esq., had been appointed Solicitor General to his Majesty."

Dec. 2. 1770. Lord Chatham solicits an interview with him.

Dec. 26. 1770.

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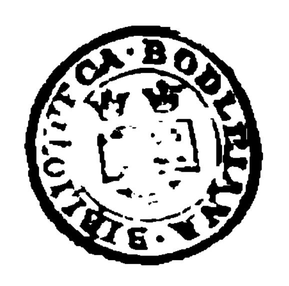
Wedderburn rats, and is made Solicitor General.

We are not informed of any particulars of the negotiation with Lord North, and it was probably not attended with much difficulty on either side.—Great was the public indignation when the result was known; and this must be confessed

* Chatham Correspondence.

to be one of the most flagrant cases of *ratting* recorded in our party annals. There not only was no change in the Government, but there was no change of circumstances or of policy, — and a solitary patriot was to cross the floor of the House of Commons that he might support the measures which he had been so loudly condemning. His own saying was now in everybody's mouth: "Bit by the tarantula of Opposition, he is cured by the music of the Court." Perhaps there was nothing more cutting than Lord Camden's remark in sending the intelligence to Lord Chatham: "I am not surprised, but grieved." *

* Chatham Correspondence, iv. 72.



CHAPTER CLXVI.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL THE COMMENCEMENT OF HOSTILITIES WITH AMERICA.

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A.D. 1771. Wedderburn's embarrassment in *crossing the floor* of the House of Commons.

ALTHOUGH it was said that "Lord Clive was full of indignation at the desertion of Wedderburn," * Mr. Solicitor vacating his seat, was re-elected for Bishops Castle without opposition †; but he had before him the disagreeable prospect of walking up to the table between two Treasury members, his liberal associates now shunning him, and to slink down on the Treasury bench between Lord North and John Robinson. ‡ He dreaded that opposing parties, suspending their general hostility, would, on this occasion, interchange well understood looks, occasioned by mutual wonderment at his apostasy. When the time came he is said virtuously to have blushed, and to have appeared much distressed, till his colleague Thurlow shook him by the hand, and with an oath welcomed him to that side of the House which he ought never to have quitted. He, for some time, wore an embarrassed air, and when he had any thing to say, he seemed to have lost all his fluency. It was probably with reference to these exhibitions that Junius remarked, "To sacrifice a respected character, and to renounce the esteem of society, requires more than Mr. Wedderburn's resolution; and though in him it was rather a profession than a desertion of his principles (I speak tenderly of this gentleman, for when treachery is in question, I think we should make allowance for a Scotchman), yet we have seen him in the House of Com-

* Chatham Corresp. iv. 80.

† The new writ was moved 25th Jan. 1771. — Com. Journ. vol. xxxiii. p. 62.

‡ This famous *job-master*, then Secretary to the Treasury, was probably active in bringing him over. Soon after, Sheridan, alluding to a Government agent by whom members were corrupted, and a cry arising, "*Name him! name him!*" said, "Sir, I *could* name him, as easily as say JACK ROBINSON."

mons overwhelmed with confusion, and almost bereft of his faculties."

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He is attacked as a renegade by Colonel Barré.

He was much aided by an attack made upon him, which gave him an opportunity for a dexterous explanation, and enabled him to recover to a considerable degree his position in the House. Having given notice of motion for a committee to inquire into the riots near the Houses of Parliament, on the commitment of Bras Crosby, the Lord Mayor of London, and Alderman Oliver, to the Tower, Colonel Barré rose and said very irregularly: "I thank the honourable and learned gentleman for his intention of moving for a committee to inquire into the causes of these riots. He will be the fittest man to conduct such an inquiry, seeing that he knows more of such matters than any of the King's present servants. I hope he will inquire not only into the causes of the assembling of recent mobs, but of those which have alarmed the public for the last three or four years, as I know that the honourable and learned gentleman has frequently declared in this house and in other places, that 'this wicked Administration has been the cause of all the misfortunes that have befallen the country — that nothing but the removal of this wicked Administration, and the dissolution of this profligate Parliament, could restore the peace and happiness of the kingdom.' I am persuaded that all his powers of eloquence will be directed to those great objects. This inquiry will afford him the finest possible opportunity of discharging the debt which he still owes to his country. As no man is better able, so no man, I am sure, can be better inclined to do it; for I have heard him declare from this bench that the King's chief minister ought to be impeached. The honourable and learned gentleman has kept exceeding *good* company — I do not say *great* company — but what I consider very *honest* company — the freemen of the corporation of London! If I am not mistaken, he did not disdain himself to become a member of that body; and I believe he was pleased to receive the freedom of the city in a gold box. Although since that time the honourable and learned gentleman has formed new connections, he cannot have altogether

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abandoned the sentiments by which he was formerly actuated. Of all men, therefore, he is the fittest to bring the causes and the occasions of these disturbances to public light."

His dexterous defence of his tergiversation.

Mr. Solicitor General Wedderburn. — "I hope the House will permit me to express my obligations to the gallant officer who has thought fit to make my political conduct the subject of his argument. Of that conduct, Sir, I shall always be ready to give an account. It may easily be summed up, — and in a very few words. With regard to the measures which I have supported in this House, and the public part I have taken out of it, — I have not repented of any measure I have ever supported — I have not learned to approve of any measures I ever opposed. I shall be extremely happy to have my future conduct tried by any principles I may at any time hitherto have professed. As to personal connections, I stand up, with great frankness and great truth, to declare that I had a personal connection which I infinitely valued and respected, and by which I held myself sacredly bound till death dissolved it — a connection founded upon friendship, founded upon gratitude, founded upon a conviction of the many virtues public and private of him with whom my lot was cast. It is a misfortune, not only to me but to this country, that we are deprived of the services of that excellent man (George Grenville). In point of personal connections, he left me a solitary unconnected individual. In following the line of conduct which seems to me most consistent with my public duty, no one can say that I have broken any private engagement into which I have ever entered." *

This dexterous use of Mr. Grenville's death misled many, and made the more knowing regard with a feeling approaching to respect the tact of him who could so defend himself by such a fallacy.†

* 2 Cavendish's Debates, 474.

† Calcraft in a letter to Lord Chatham, referring to this debate, says, — "that Wedderburn was fully paid off for his insolence by Barré, who dressed him with dignity, propriety, and great severity." — *Chatham Correspondence*, iv. 138. But Lord Commissioner Adam in his MS. sketch of Wedderburn,

When he had got over the disgrace which, even in those days, was for a time incurred by such a sudden change of party, he proved to be a brilliantly effective supporter of the Government. "It was a proud day for the bar," says Matthias *, "when Lord North made Thurlow and Wedderburn Attorney and Solicitor General; for never before that day were such irresistible, overbearing talents and powers displayed by the official defenders of Ministers.

Praise of him and Thurlow as law officers of the Crown, by Matthias.

"—— Hos mirabantur Athenæ
Torrentes, pleni et moderantes fræna theatri."

"The minister," observed Horne Tooke †, "sat secure between his two brazen pillars, Jachin and Boaz, to guard the Treasury bench."

By Horne Tooke.

Said Gibbon, giving an account of his entrance into the House of Commons, "The cause of Government was ably vindicated by Lord North, a statesman of spotless integrity, a consummate master of debate, who could wield with equal dexterity the arms of reason and of ridicule. He was seated on the Treasury bench, between his Attorney and Solicitor General, *magis pares quam similes;* and the minister might indulge in a short slumber whilst he was upholden on either hand by the majestic sense of Thurlow, and the skilful eloquence of Wedderburn." ‡

By Gibbon.

Mr. Adolphus, in contrasting them, says, "Thurlow was nervous, impressive, and majestic; he delivered the resolute dictates of a superior intellect without soliciting applause. From him truth appeared above the aid of art; and the judgment was summoned to yield without an appeal to the intervention of fancy. Wedderburn was acute, perspicuous, elegant, and persuasive; he alternately essayed the force of reason and the charms of eloquence; sometimes attacking the judgment with refined argument, at other times appeal-

By Adolphus.

says,—"He had to defend himself against a bitter attack for accepting the office of Solicitor General under Lord North. His speech on that occasion produced a most unaccountable impression. When I came into the House of Commons in 1774, he was one of the speakers most in favour with the House."

* Pursuits of Literature. † State Trials.

‡ Memoirs, p. 146.

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ing to the fancy with the powers of wit and graces of elocution." *

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By Townsend.

I have likewise much pleasure in introducing a very happy parallel between them by Mr. Townsend: "Both law officers exercised considerable sway in the House, but in a perfectly distinct style and manner; the one the Ajax, the other the Ulysses of debate. The one, blunt, coarse, and vigorous, hurled hard words and strong epithets at his opponents in a tremendous voice, with a look and tone of defiance; the other, elegant, subtle, and insinuating, arrayed his arguments in all the persuasive guises of rhetoric, and where he could not convince the reason, or move the passions, sought to silence objections with ironical pleasantry and bitter sarcasm. Their rival feats of eloquence may be compared to the trial of strength and dexterity between Cœur de Lion and Saladin, mentioned in the "Talisman" by Sir Walter Scott. King Richard, with his two-handed sword, cut asunder the iron bar which no arm but his could have severed; the Soldan could exhibit no such miracle of muscular strength, inferior as he was in brawn, and sinew, and muscle; but with his blue scymetar he severed the cushion and veil into two equal parts, displaying at the same time the extreme temper and sharpness of the weapon, and the exquisite dexterity of him who used it." †

* Vol. ii. p. 150.

† Lives of Twelve Eminent Judges, vol. i. p. 185.

Here is an amusing peep behind the curtain, showing how the actors got up their parts: —" Lord Haddington asked W. once when he was Chief Justice, how he possibly contrived to get on with Thurlow when he was under him as Solicitor, considering the unwonted quantity of public work they had to do together, both as to America, France, and Spain, owing to the indolence of Lord North and the incapacity of several of his colleagues. 'Nothing was so easy,' said Lord L. 'I knew Thurlow to be a bully, and only a bully, with no moral nerve — but intolerable if not subdued; so I resolved on my course. The first paper I had to prepare was one of great importance and difficulty, and I sent it to him that he might consider and revise. When I saw him he swore fearfully, declared that 'there never was any thing so ill done — it could not be used. He had no time to correct it — it was too bad to be corrected, I must do it over again.' I said, 'I beg your pardon — I have done my best: I know there are great imperfections in it — I am not satisfied myself, but I cannot do it better; I have bestowed my whole mind on it, and if you cannot take it, you must prepare the paper yourself.' He growled very savagely, but he saw I was quite determined, and so I left it with him. When we next met, he produced my paper without a word of alteration — said he had no time to alter, that it must just do, but it was a perfect disgrace to them both, and he should say so — for he was ashamed

Defective report of Wedderburn's official speeches.

We have very defective reports of Wedderburn's official speeches in the House of Commons, from which he gained so much contemporary applause. He seems to have taken some pains in revising them while he was an Opposition orator, but now to have been too much occupied to pay the slightest attention to them, although parliamentary reporting was then at the lowest ebb, Dr. Johnson having long withdrawn from this employment, and no other man of education having taken it up. The following is his account of those on whom, in his time, the reputation of the orator depended: "Of all people, shorthand writers are the farthest from correctness; there are no men's words they ever hear that again return. They are in general ignorant, as acting mechanically; by not considering the antecedent, and catching the sound and not the sense, they pervert the meaning of the speaker, and make him appear as ignorant as themselves." * Yet he acknowledged that they occasionally showed ability, if not accuracy. Being once asked if he had really delivered a certain speech which the newspapers imputed to him, he replied, "Why, to be sure, there are in that report a few things which I did say, but many things which I am glad I did not say, *and some things which I wish I could have said.*"

His account of the short-hand writers of his day.

Privilege question respecting the publication of debates.

One subject entirely engrossed the attention of the House of Commons during the first session of his official life,—the Privilege question, arising out of the attempt to prevent the publication of debates. From the stimulus given to political discussion by the controversy on the Middlesex election, and by the "Letters of Junius," there was an increased curiosity respecting parliamentary proceedings, and the newspapers

of the paper.' 'Indeed, Mr. Attorney, you *shall not say so*, and it is better that we understand each other once for all. I will assist you to the utmost of my power; if you cannot use the papers I draw, then of course I may be unfit for my office, and you must do the work; but if you adopt my paper, it is no longer mine—it is yours, and *must* be yours, and yours alone. I will have neither merit nor discredit from it.' I said this with the utmost coolness: he swore away, but said, 'Well, take it away—it will do as well as any thing else, I suppose.' I never afterwards had a single difference with him."

* Burke's famous sentiment,—"Virtue does not depend on climates or degrees," was at first given to the world—"Virtue does not depend on *climaxes and trees*."—He has nobly vindicated his reputation by reporting and publishing his own speeches.

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began to give, though in a rude fashion, while parliament was sitting, speeches said to have been delivered in either house, with the names of the speakers at full length.* The audacious printers were summoned to appear at the bar, and, not appearing, a proclamation was put forth offering a reward for their apprehension. Then was the messenger of the House, who had been sent to arrest them, committed to prison by the city magistrates, and a printer arrested was immediately liberated and bound over to prosecute the messenger. Next came the imprisonment, in the Tower, of the committing magistrates, Bras Crosby, the Lord Mayor, and Alderman Oliver, — with innumerable petitions and motions for their discharge. The Solicitor General must necessarily have taken an active part in these proceedings, but he is only mentioned by the "Parliamentary History" as having spoken on the 19th of March, when a question arose as to the right of one Twine Carpenter, a printer's devil, to a reward for having laid hold of a Mr. Wheble, his master, one of the printers named in the proclamation, and conducted him to the Mansion House, where he was set at liberty by Mr. Wilkes, — there being an allegation that this arrest was merely collusive, so that the reward might be claimed, and the authority of the House turned into ridicule. *Mr. Solicitor General Wedderburn.* — "Sir, Whether the proclamation be legal or not, I shall not now say. A court of law is the proper place to determine that question. As to Mr. Twine Carpenter, for whom the honourable gentleman is so warm an advocate, I shall certainly resist giving him any countenance. He is neither more nor less than a familiar of Mr. Wheble, called his 'devil;' by a bargain between this devil and Wheble the devil arrests him. Now, as it manifestly appears that the devil and the printer are in compact, I think the wisest thing we can do is to leave the devil to the printer, and the printer to his devil. Whether printer beats devil, or devil beats printer, is of no consequence. There is the devil to

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Wedderburn's speech in the case of the printer's devil.

* Formerly the Reports did not come out till after the prorogation — pretending often to be of the senate of Lilliput, and never venturing on more than the initials of the names of the speakers.

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pay; but that is nothing to us. I hope the devil will find no friends in this house, and that, however busy he may have been in the city, and however busy the city may have been with him, we shall have nothing to do with him, nor give him an opportunity of having any thing to do with us." *

Lord North moved, as an amendment, "That Mr. Wilkes should attend to explain his conduct." This, like the other Government motions on the subject, was carried by an immense majority; but public opinion was so strong against the House, that the Ministers were compelled to drop these proceedings,—a great constitutional victory was gained, and the right to publish parliamentary debates was for ever practically established,—in spite of the *brutum fulmen* of a standing order against it.†

March 25. 1771.

About this time Wedderburn gained great credit as an enlightened protector of literary merit. Mr. Thomas Townshend had complained in the House of Commons of the pension granted to Dr. Johnson, saying, "I consider him a man of some talent, but no temper. The principles he upholds I shall ever detest. This man, a Jacobite by principle, has been encouraged, fostered, pensioned, because he is a Jacobite." *Mr. Solicitor-General Wedderburn.* — "The misinformation of the honourable gentleman, if not corrected, will do injustice to two persons, both absent. From the course of my pursuits, I have not seen Dr. Johnson four times in my life. This, however, I know,—that he was not pensioned because he was a Jacobite, nor on account of his political principles; — that he was not pensioned from any such illiberal motive. The only motive for granting that pension was Dr. Johnson's distinction in the literary world and his prospect of approaching distress. The person who solicited it for him was totally unacquainted with any thing beyond his merit as an author and his poverty. Was not the 'Dictionary of the English Language' reason enough for a mark of public bounty, without supposing that bad principles were

His patronage of literature.

* 17 Parl. Hist. 58—164.; Annual Register, 1771.

† Chatham Correspondence, vol. iv. p. 115.

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to be encouraged, or corrupt services were to be purchased? The Minister to whom the application was made, and the man who made the application, never inquired into his political or religious tenets. If a Papist, or a theoretical admirer of a republican form of government, should be a great mathematician or a great poet, doing honour to his country and his age, and should fall into destitution, is he to be excluded from the royal bounty? Let not such language be held in this House, or in any society where there is any respect for intellectual greatness."*

The Minister applied to was Lord Bute, and the man who made the application was Mr. Wedderburn himself. Boswell says, "Lord Bute told me that Mr. Wedderburn, now Lord Loughborough, was the person who first mentioned the subject to him. Lord Loughborough told me that the pension was granted to Johnson solely as the reward of his literary merit, without any stipulation whatever, or even tacit understanding that he should write for Administration. Lord Bute said to him expressly, 'It is not given for any thing you are to do, but for what you have done.'"†

1772, 1773. Two quiet years.

For above two years following England enjoyed great public tranquillity. The dispute with Spain about the Falkland Islands having been adjusted, there was profound peace with foreign nations, — the discontents in the American colonies smouldered, although accurate observers perceived that they would soon burst into a flame, — and Wilkes, Bras Crosby, and Alderman Oliver being set at liberty, soon fell into almost entire neglect.‡ During this lull there were brought forward in parliament few questions more stirring than the subscription to the Thirty-nine

* 2 Cavendish Deb. 457.

† 1 Boswell, pp. 353, 354. Yet Dr. Johnson did, out of gratitude, write "The False Alarm," and "Taxation no Tyranny," the proof sheets of which were revised at the Treasury.

‡ It would appear from a letter of Wedderburn to his client and friend Lord Clive, that their liberation even went off tamely: — "There are no public news in town. We had a little mobbing last night (on the release of the Lord Mayor from the Tower), but not to any great excess. My neighbour the Speaker had his windows mauled exceedingly; but by great good fortune the gentlemen were so busy with his, that they left mine untouched." — *Townsend's Lives*, vol. i. p. 179.

Articles, — the amendment of the law of charitable bequests,— the protection of literary property, — the establishment of courts of justice in India, — and the renewal of the Grenville Act. On the presentation of a petition to dispense with subscription to the Thirty-nine Articles in the Universities, a long debate arose, whether the petition should be received? Lord North opposed it; but it being considered an open question, the Solicitor General took the opposite side, indulging always in a hankering after popularity, where he safely could. He urged that the subject was clearly within the cognizance of Parliament, and that they were bound to hear the alleged grievances of the people, although they might not deem it expedient to grant the relief prayed. The objection on the Act of Union he ridiculed, after the alterations since made both in the English and Scotch Church—in the English by the law against occasional conformity—in the Scotch by the restoration of lay patronage. "The Universities," said he, "which are to prepare for all the learned professions, and to rear fit members of parliament, ought not to be confined to those of a particular creed; and we must reform them, if they will not reform themselves. I cannot conceive that the propriety or efficacy of a prescription can depend upon whether the physician has or has not signed the Thirty-nine Articles of the Church of England." The petition was rejected, however, by a majority of 217 to 71.*

Feb. 6. 1772. Wedderburn's speech against requiring subscription to the Thirty-nine Articles by laymen.

In the next session Mr. Solicitor brought forward a bill on a subject which still continues to perplex legislators — "the regulation of charitable trusts." His speech was very able, but proved ineffectual. The reporter of the debate says,

April 29. 1773.

* 17 Parl Hist. 294. Of this debate Gibbon gives the following scoffing account to Lord Sheffield. "Boodle's, Saturday night, February 8. 1772. Though it is very late, and the bell tells me that I have not above ten minutes left, I employ them with pleasure in congratulating you on the late victory of our dear mamma, the Church of England. She had last Thursday 71 rebellious sons, who pretended to set aside her will on account of insanity; but 217 worthy champions, headed by Lord North, Burke, Hans Stanley, Charles Fox, &c., though they allowed the thirty-nine clauses of her Testament were absurd and unreasonable, supported the validity of it with infinite humour."— *Misc. Works*, vol. i. p. 447. The very rare occurrence happened on this occasion — of publishing a list of the minority, — in which the world must have been surprised to find the name of the "wary Wedderburn."

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"Mr. Edmund Burke answered him with infinite ability and candour. We do not remember that gentleman making a speech in which he stuck so close to the argument, and made so few flights into the regions of fancy and imagination." *

Copyright question.

Wedderburn, having been counsel at the bar of the House of Lords in the great case of copyright, delivered a most admirable argument, to show that an author, by the common law, has a property in his work after he has published it, so as to be entitled to prevent its being reprinted without his authority †; and being defeated, he very ably supported against Thurlow the bill for extending the period of exclusive enjoyment beyond fourteen years, originally fixed by the statute of Anne. ‡ — India judicature, and the general affairs of the East India Company, being pressed on the attention of Parliament, Wedderburn carried some palliating measures on the part of Government through the House of Commons — but they then excited no interest — men little foreseeing that in ten years more this was a subject on which Administrations would be dissolved and the nation would be convulsed. § The proposal to make the Grenville Act perpetual raised another open question, — and Lord North and the Attorney General having opposed it, we are told, "The Solicitor General, in a long and masterly speech, expatiated on the foundation of the bill. He was very severe on Mr. Charles Fox, who, he said, had dreadful apprehensions of losing his privileges. But if the young gentleman were not of such an obstinate disposition, he would endeavour to convince him of his error. He spoke much in favour of the decision of elections that had been tried by this act, and concluded by giving his consent to its being perpetual." ‖ There was a majority of 250 to 122 for

Grenville Act made perpetual.

* 17 Parl. Hist. 846.
† Ib. 963.
‡ Ib. 1087.
§ Ib. 848.
‖ 17 Parl. Hist. 1071. I must own that I think the arguments against the trial of contested elections by a statutable tribunal under the control of the courts of common law very powerful, and that the House of Commons would have done better to have framed committees by resolutions, under their own exclusive authority. They wanted nothing for this purpose but the power of administering an oath, — which in all cases ought to be exercised by them as well as by the House of Lords.

the bill — although Fox continued so eager against it, that he was teller for the minority.

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Wedderburn's conduct on the complaint in the House of Commons against Henry Sampson Woodfall.

As some have asserted that Wedderburn was "Junius," it may be proper to notice the course he took when a complaint was made against Henry Sampson Woodfall and John Horne Tooke, for a libel on the Speaker. This had appeared in Woodfall's newspaper, "The Daily Public Advertiser," and he had declared at the bar that he had received it from Horne Tooke, — but there was no evidence to corroborate him. The Solicitor General spoke several times in the course of the proceeding, and certainly did show a considerable leaning in favour of the publisher of the mysterious letters which had lately so astounded the public. "I own, Sir, with great readiness," said he, "that as Mr. Woodfall is involved in the guilt of this publication, I shall not, either on principles of law, or principles of humanity, give my vote for Mr. Horne's conviction, if nothing more is produced against him. Mr. Woodfall, Sir, however he may have been distinguished for his private probity, stands before us now in the light of a delinquent, and we cannot convict upon his uncorroborated testimony, whatever may be our private opinion, and whatever suspicion may attach to the accused. From the candid behaviour of Mr. Woodfall, when he was before the House, he is probably not in a very perilous situation; but it remains to be seen how we shall deal with Mr. Horne; if his friends do not really suspect his innocence, they have no cause to tremble for his situation. I think that Mr. Woodfall's journeymen should be examined. We are not trying Mr. Horne twice for the same offence; we shall only adjourn the trial to ascertain whether he be guilty on the original charge." A motion for examining Mr. Woodfall's journeymen was carried by a majority of 132 to 44.* When called in they all professed entire ignorance of the subject, — so that Horne Tooke for this time got off scot free. There was a proposal to send Woodfall to Newgate, but from the good word of the Solicitor General, he was dismissed with a reprimand. — The notion that Wedderburn himself had been the greatest of libellers, now

* 17 Parl Hist. 1028—1050.

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gained a little ground, notwithstanding the bitter abuse of him and of his country in which Junius pretended to delight: but (as I shall afterwards show) this extravagant suspicion is without proof or probability.

May 10. 1773. His speech in defence of Lord Clive.

From the want of opportunity and of excitement, Wedderburn's reputation for eloquence was declining, — when it was revived by General Burgoyne's resolutions against Lord Clive. Lord North affected to support the prosecution, but did not treat it as a government question, and Wedderburn, though he knew that he was to be opposed by Thurlow, made a gallant defence for his friend and patron: "The honourable mover," said he, "has entered into a long recapitulation of events which happened sixteen years ago, and from them he adduces two matters of charge: those I desire leave to examine: the one is the dethroning and putting to death Surajah Dowlah; and the other is a general officer's name being fixed to an order of assassination. Upon the subject of the resolution I shall observe, that it is a most narrow and illiberal idea to suppose that great and striking events — subversions of government, wars, and conquests — are to be carried through upon the direct and absolute principles of school philosophy and morality; — such a supposition would be idle, would be preposterous. I will venture to assert that a revolution so important never was, and never will be, so conducted. Throughout the honourable gentleman's copious narrative of the transaction, I am rather astonished that we should have heard not a word of the character of Surajah Dowlah, — no allusion to the black hole at Calcutta, — not a word of that vengeance and retributive justice which must have been prompted by the most cruel, black, and horrid exercise of tyranny which stains the annals of human nature. Is this candid? Is this the principle to guide inquiry, and to mete out punishment? The real fact is this; — a monster of tyranny, á murderer and a villain, our mortal enemy, is to be dethroned. He is dethroned by a conquering army, and put to death. This transaction — a series of fighting and victory — was so rapid, that every moment was filled with great events. From these originated

the vast empire of the East India Company. Without these the East India Company would have continued pedlars instead of being transformed into mighty sovereigns. The honourable gentleman has declaimed much on the stain upon the British name from the manner in which this revolution was conducted. I am of a very different opinion: when our feuds and animosities are forgotten, the recording pen of a candid historian will trace in imperishable characters the just eulogy, that in a revolution which acquired to the Company a dominion larger, wealthier, and more populous than ever Athens possessed, or Rome herself when she had conquered the Italian states, — larger than France, and in revenues superior to most of the powers of Europe, — that in the career of such conquests very few occurrences happened which reflected dishonour on individuals,—none that tarnished the British name. As to General Casland's signature standing to an order of assassination, he solemnly declares that the whole was a feint of the Nabob to discover the sentiments of the army, protests that, had he known the use which was made of it, he would not have done it for a thousand worlds: in this he appeals to the testimony of the whole army and navy, and to every officer in the civil service. One of the resolutions is, that all the fortunes then made are, after sixteen years, without distinction, to be refunded. For shame! What! is this to be the national gratitude for exploits which have been the pride of Britain, the envy of Europe, and the admiration of the whole world? Upon such odious insinuations are we to raise an envious hand against those laurels which flourish on the brows of men who have done so much? You would now plunder the men to whose bravery, conduct, and unparalleled activity you owe this vast empire. You would imitate the democratic tyranny of an Athenian mob, envious of every great and noble name, — taking off one for his wealth, imprisoning another for family, and banishing a third for his fame. It is this detestable spirit which would establish real tyranny at home, in complaining of imaginary grievances in distant lands." The resolutions were all carried, but there was a

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re-action in the public mind in favour of Clive after his melancholy end, and posterity has done him justice, by regarding him as one of the greatest of conquerors and of statesmen.*

He attempts to induce Voltaire to celebrate the actions of Lord Clive.

We find, from the following familiar letter to him, that Wedderburn, ever most zealously earnest to exalt his actions and to clear his character, was striving to see justice done to him by the great patriarch of literature, who was then supposed to be able to guide the opinions of mankind on all civil affairs:—

"My dear Lord,

"Mr. Stuart informs me that he has sent your Lordship a letter he received from the gentleman (Dr. John More) who has the care of the Duke of Hamilton at Geneva, expressing the desire that Voltaire has to be informed of the affairs of the East Indies, and to celebrate the great actions that have been done there. I took the precaution of desiring Mr. Clive to load his trunk with the most important papers that are printed on that subject; but it has occurred to me that he would deliver them with a better effect if they were introduced by a few lines from your Lordship, or at least a written message to the old gentleman. I don't know whether Mr. King is at Walcot; he would be delighted to have an occasion of addressing his favourite author on this subject. Lady Clive will, I am afraid, scruple at a corespondence with so free a writer; but whatever mischief his works may do for a better state, in this world they are very entertaining; and that justice to your fame, which is everywhere your due, will have a very good effect in England, coming from the pen of a Frenchman, writing at the

* 17 Parl. Hist. 862. Gibbon, who heard this speech of Wedderburn, seems to have thought justly that it was rather declamatory. "11 May, 1773. The House of Commons sat late last night. Burgoyne made some spirited motions. Wedderburn defended the Nabobs with great eloquence but little argument. The hounds go out again next Friday. They are in high spirits; but the more sagacious ones have no idea they shall kill. Lord North spoke for the inquiry, but faintly and reluctantly."—*Miscell. Works*, vol. i. p. 469.—Lord Clive was very desirous of having this vindication of his conduct revised and printed by the author; but Wedderburn was wisely contented with the éclat he had acquired from the newspaper reports of it. I have known several instances of an orator kicking down the reputation of a successful speech by publishing it—success in speaking often arising from accidental circumstances which do not touch the reader. It is better therefore that there should be an opening for friends to allay public disappointment by observing—"What a pity he did not follow the example of Burke, and publish a full and correct edition of his speech, instead of trusting to *vile newspaper reporting*."

foot of the Alps. I have seen no creature but lawyers for a fortnight past, and I know no news. Robert desires I would make his apology to your Lordship for suffering himself to be seduced by me to give me one day at Mitcham, which I am sure you will forgive. Mrs. W. joins me in compliments to Lady Clive and Miss Ducarelle, and I am, my dear Lord,

"Yours most sincerely,

"A. W.

"Lincoln's Inn Fields, 9th July, 1773."*

Wedderburn's marriage.

His habits in private life.

I should be glad, for the relief of the reader, if I could here present the subject of this memoir as he then was in private life; but I have been able to find little except his struggles for professional and political advancement. On the 1st of December, 1767, he had married Betty Anne, sole child and heir of John Dawson, of Marly in the county of York, Esq., who brought him a considerable fortune, and he lived with her harmoniously and courteously,—but he was childless, and his chief enjoyment seems to have been in ambition. He never abandoned himself to the amusement of the hour; he was not even solicitous to shine in conversation, considering the éclat from a *bon mot* in the salon poor compared with that from a brilliant speech in Parliament. Having little pleasure in literature for its own sake, he referred to books only that they might assist him in his speeches, and he mixed with literary men that they might sound his praise. He was now

* Townsend's Lives, vol. i. p. 179. Wedderburn continued on friendly terms with Lord Clive, and there are to be found in the Rosslyn MSS. a considerable number of letters from the one to the other; but they turn chiefly on the local politics of the county of Salop, and on private business. I give an extract from a letter of Lord Clive to Mr. Wedderburn of a different complexion, dated Geneva, Dec. 19. 1775, showing the enthusiastic impiety of Voltaire, which unhappily was then much admired:—"To prevent our being quite melancholy, however, the Château de Fernés has furnished us with a little anecdote; it is almost too trifling for a place in a letter; its only claim is the want of other events more interesting. Monsieur Gibber, one of the Paris literati, paid a visit to Fernés. Voltaire was ill and not to be seen; he gave orders, however, for his visitors being well entertained. Monsieur Gibber, after having dined and waited a long time ineffectually, in hopes that Voltaire would appear for a moment, wrote on a card these lines:—

"Je croiois voir ici le vrai Dieu du Génie,
L'entendre, lui parler, l'admirer en tout point:
Mais il est comme Dieu dans l'Eucharistie,
On le mange, on le boit, mais on ne le voit point."

Que l'on m'amène," cries Voltaire, "ce cher impie, ce cher incredule!'"

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able to gratify his passion for splendour, in which he seems to have taken delight, independently of its tendency to raise his consequence in the world. He told Lord Haddington that the day he was made Solicitor General he ordered a service of plate which cost him 8000*l.* Lord Clive for his services had not only given him lacs of rupees and returned him to Parliament, but had magnificently made him a present of a splendid villa at Mitcham in Surry. Here he used on Saturdays and Sundays to entertain the great and the witty. He likewise had an elegant house in Lincoln's Inn Fields, not far from that occupied by the Duke of Newcastle — a quarter which I recollect still the envied resort of legal magnates. A coach and six was no longer considered indispensable for a law officer of the crown *; but in horses and equipages he rivalled the nobility, so that if his debts had been all paid, it is doubtful whether at this time he would have been found richer than when he was set down at the Bull and Mouth by the Edinburgh stage coach. Yet he never allowed such matters at all to interfere with his attention to business, and he could throw his whole soul into any cause in which public distinction was to be acquired.

Wedderburn and Benjamin Franklin.

I now come to his memorable contest with Benjamin Franklin.†

"The babe that was unborn might rue
The *speaking* of that day."

It mainly conduced to the civil war which soon followed, and to the dismemberment of the empire, — by exciting overweening arrogance on one side, and rankling revenge on the other. Had Franklin been soothed, instead of being insulted, America might have been saved. As yet, though eager for the redress of the wrongs of his transatlantic brethren, he professed, and I believe he felt, respect and kindness for the mother country, and a desire that all differences

* When Sir Dudley Ryder (who had not been long dead) was Attorney General, having a house in Chancery Lane, and a villa at Streatham, he always travelled between them in a coach and six. When I was Attorney General I had the pleasure of travelling, when I chose, on the top of a stage coach or in an omnibus — in which I met a ducal member of the cabinet.

† See Chatham Correspondence, iv. 322.

Origin of the dispute.

between them might be honourably reconciled. Being agent for the province of Massachusets, and having got possession, by mysterious and probably unjustifiable means, of certain letters written by Mr. Hutchinson, the Lieutenant Governor, and Mr. Oliver, the Chief Justice of that province, to Mr. Whately, who had been private secretary to George Grenville, — recommending the employment of a military force for the suppression of the discontents there, — he transmitted them to the Speaker of the House of Assembly, and being publicly read, they were considered evidence of a conspiracy to destroy the liberties of the colonies. A petition to the King was unanimously agreed to, praying for the recal of the Lieutenant Governor and the Chief Justice. This petition was very imprudently referred to a committee of the Privy Council, that its allegations might be openly discussed. The Executive Government ought quietly to have disposed of it, either by refusing its prayer, or by transferring the parties complained against to some other sphere, where their services would be more available for the public good: but it was thought that a glorious opportunity had occurred of publicly inveighing against the colonists, and of heaping odium on their champion.

It is referred to a committee of the Privy Council.

Jan. 29. 1774. The hearing.

As the day for the hearing approached, public expectation was raised to a higher pitch than it had been by any juridical proceeding in England since the trial of Sacheverell. The scene was the Council Chamber at the Cockpit, Whitehall. Thirty-five privy counsellors attended,—with Earl Gower, the Lord President, at their head. Accommodation was made near the bar for Burke, Priestley, Jeremy Bentham, and other distinguished strangers, and the adjoining rooms and passages were crowded by an innumerable multitude, who could only catch some distant murmurs of the vituperation, and inquire from time to time what was likely to be the result. We have, from Jeremy Bentham, a curious description of the apartment, and the appearance of him who was beheld of all beholders:—" The president's chair was with the back parallel to and not far distant from the fire; the chimney piece, projecting a foot or two, formed a recess on each side.

Description of Franklin's demeanour on this occasion.

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Alone, in the recess, on the left hand of the president, stood Benjamin Franklin, in such a position as not to be visible from the situation of the president, remaining the whole time like a rock, in the same posture, his head resting on his left hand, and in that attitude abiding the pelting of the pitiless storm." Dunning and Lee stood at the bar as counsel for the petitioners. Wedderburne, as Solicitor General, alone attended for the crown, or, more properly speaking, as assessor to the Privy Council. "His station was between the seats of two of the members on the side of the right hand of the Lord President." *

Dunning and Lee began, but their speeches are entirely lost; they are said to have spoken feebly, being ashamed (as some insinuated) of the manner in which the letters had been obtained and made public. †

Wedderburn's philippic against Franklin.

Wedderburn did not stand in need of the stimulus of a fierce attack; but came fully charged with venom, which he had long been distilling. We have by no means a full report of his speech, but some of the most striking passages of it have been handed down to us. "The present question," he observed, "is of no less magnitude than whether the Crown shall ever be permitted to employ a faithful and steady servant in the administration of a colony? His Majesty, in appointing Mr. Hutchinson, followed the wishes of his people; no other man could have been named in whom so many favourable circumstances concurred to recommend him. A native of the country, whose ancestors were among its first settlers — a gentleman who had for many years presided in the law courts — of tried integrity — of confessed abilities — and who has long devoted himself to the study of the history and constitution of the country he was to govern. Against him the petitioners do not attempt to allege one single act of misconduct during the four years he has ruled over them. So the Chief Justice, equally remarkable for his learning and his

* Jeremy Bentham. When the Attorney and Solicitor General now attend as assessors to the Privy Council, they are placed at a small table at the upper end of the great table at which the members sit.

† See a letter from Priestley, *Monthly Magazine*, Nov. 1802. 2 Adolph. 41.

integrity, stands unaccused and unsuspected of any malversation in his office. Yet both are to be punished by a disgraceful removal. Let me examine the only ground which my learned friends have taken in support of the petition. Abstaining from any charge of official misconduct, they have read to your lordships the Assembly's address, — they have read the letters, and they have read the censures passed upon them. But having then contented themselves with praying the dismissal of these meritorious servants of the public, they frankly admit to your lordships that there is no cause to try; there is no charge — there are no accusers — there are no proofs. They simply say, 'the Lieutenant Governor and the Chief Justice should be censured, because they have lost the confidence of those who complain against them.' This is so very extraordinary a proceeding that I know of no precedent, except one; but that, I confess, according to the Roman poet's report, is a case in point: —

> "Nunquam, si quid mihi credis, amavi
> Hunc hominem. Sed quo cecidit sub crimine? Quisnam
> Delator? Quibus indicibus? Quo teste probavit?
> Nil horum — verbosa et grandis epistola venit
> A Capreis — bene habet: nil plus interrogo."

Having examined the letters, and contended that they were harmless, and at all events that they were private, so that they could not possibly be made the foundation of a charge of public misconduct, he said: — "On the part of Mr. Hutchinson and Mr. Oliver, however, I am instructed to assure your lordships that they feel no spark of resentment even against the individuals who have done them this injustice. They are convinced that the people, though misled, are innocent. If the conduct of a few ill-designing men should provoke a just indignation, *they* would be the most forward, and, I trust, the most efficacious solicitors to avert its effects. They love the soil, the constitution, the people of New England: they look with reverence to this country, and with affection to that. For the sake of the people they wish some faults corrected, anarchy abolished, and civil government re-established. But these salutary ends they wish to promote

by the gentlest means. They wish no liberties to be abridged which a people can possibly use to its own advantage. A restraint from self-destruction is the only restraint they desire to be imposed upon New England." Wedderburn then, as the *coup-de-grace* to his victim, whom he thought he had almost sufficiently tortured, proceeded to consider the manner in which the letters had been obtained and published. "How they came into the possession of any one but the right owners," he said, "is still a mystery for Dr. Franklin to explain. He was not the rightful owner, and they could not have come into his hands by fair means. Nothing will acquit Dr. Franklin of the charge of obtaining them by fraudulent or corrupt means, for the most malignant of purposes,—unless he stole them from the person who stole them. This argument is irrefragable. I hope, my lords, you will mark and brand the man, for the honour of this country, of Europe, and of mankind. Private correspondence has hitherto been held sacred in times of the greatest party rage, not only in politics, but in religion. The betrayer of it has forfeited all the respect of the good, and of his own associates. Into what companies will the fabricator of this iniquity hereafter go with an unembarrassed face, or with any semblance of the honest intrepidity of virtue? Men will watch him with a jealous eye — they will hide their papers from him, and lock up their escritoires. Having hitherto aspired after fame by his writings, he will henceforth esteem it a libel to be called *a man of letters* — '*homo trium literarum.*'* But he not only took away these papers from one brother, — he kept himself concealed till he nearly occasioned the murder of another. It is impossible to read his account, expressive of the coolest and most deliberate malice, without horror.†

* *Fur*, a thief.

† This refers to a duel in Hyde Park between a Mr. John Temple, of Boston, accused of having been instrumental in procuring and publishing the letters, and Mr. Wm. Whately, a brother of the gentleman to whom they were addressed, and from whose effects they were supposed to be purloined. Thereupon, Dr. Franklin wrote a letter to a newspaper, in which he said, "I think it incumbent on me to declare (for the prevention of future mischief) that I alone am the person who obtained and transmitted to Boston the letters in question. They were not of the nature of *private letters between friends*; they were

Amidst these tragical events, of one person nearly murdered —of another answerable for the issue—of a worthy governor hurt in the dearest interests—the fate of America in suspense —here is a man who, with the utmost insensibility of remorse, stands up and avows himself the author of all. I can compare him only to Zanga in Dr. Young's REVENGE—

> ——— "Know, then, 'twas I.
> I forged the letter — I disposed the picture —
> I hated, I despised — and I destroy."

I ask, my Lords, whether the revengeful temper attributed by poetic fiction only to the bloody-minded African, is not surpassed by the coolness and apathy of the wily New Englander?"

Effect upon the hearers.

The effect of this invective upon the hearers was greater than almost any thing we read of in the history of English eloquence. Says Jeremy Bentham, "Without any prejudice in favour of the orator, I was not more astonished at the brilliancy of his lightning than astounded by the thunder that accompanied it." We can easily conceive the delight of the assembled Privy Counsellors, who had been selected and summoned on this occasion—from their known hatred of the discontented Americans, and their impatient desire to coerce them;—but without very strong testimony we could not give credit to the stories circulated of their demeanor,—considering that they were sitting as judges, and that at least the *affectation* of impartiality might have been expected from them. "Nevertheless," says Dr. Priestley, "at the sallies of his sarcastic wit, all the members of the Council (the President himself, Lord Gower, not excepted) frequently laughed outright. No person belonging to the Council behaved with decent gravity except Lord North, who, coming late, took his stand behind a chair opposite me."* Some accounts represent that they actually cheered him, as if they

Scandalous behaviour of the Privy Counsellors.

written by public officers to persons in public stations, on public affairs, and intended to procure public measures; they were therefore handed to other public persons who might be influenced by them: their tendency was to incense the mother country against her colonies, and by the steps recommended, to widen the breach;—which they effected."

* Letter from Dr. Priestley, *Monthly Magazine*, Nov. 1802.

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had been listening to a spirited party-speech in Parliament. Lord Shelburn, in a letter to Lord Chatham, writes: "The indecency of their behaviour exceeded, as is agreed on all hands, that of any committee of election;"* and Charles Fox, in the debate on the renewal of the war in 1803, warning the House not to be led away by the delusive eloquence of Pitt, reminded them "how all men tossed up their hats, and clapped their hands in boundless delight, at Mr. Wedderburn's speech against Dr. Franklin, without reckoning the cost it was to entail upon them."†

The judgment against Franklin.

The Committee of the Privy Council instantly voted "That the petition was false, groundless, vexatious, and scandalous, and calculated only for the seditious purpose of keeping up a spirit of clamour and discontent in the province." The King in Council confirmed the report, and Dr. Franklin was dismissed from the office of Deputy Postmaster General in America. He himself had sat during the whole of the proceedings before the Privy Council, although all eyes were directed upon him, in the position in which Jeremy Bentham has described him,—without moving a muscle. He pretended to despise the vituperation as "the idle air one hears but heeds not"— saying, "it was a matter of indifference to him that a venal lawyer was hired and encouraged to abuse the petitioners and their agent in the grossest terms scurrility could invent—and that a man so mercenary, if well feed, would have been equally loud in his praise, or in praise of the Devil." But the speech which Franklin thus pretended to despise had rankled in his heart. What secret vow he made he never revealed, but years afterwards, on the termination of the war by which the independence of America was established, being then Ambassador of the United States at Paris, he signed the articles of peace in the identical dress which he had worn when inveighed against by Wedderburn. "He

Franklin signs the treaty of peace in the dress which he then wore.

* Chatham Correspondence, iv. 322. — Lord Shelburn adds, "The scurrilous invective was occasioned, as Dr. Franklin says, by some matter of private animosity — as Mr. Wedderburn says — by his attachment to his deceased friend Mr. Whately, the publication of whose correspondence contributed to inflame the Assembly to their late resolutions." — *Letter*, dated 3d Feb. 1774.

† Lord Brougham's Characters, vol. i 74.

had stood," says Dr. Priestley, "conspicuously erect during the harangue, and kept his countenance as immovable as if his features had been made of wood.—But the suit of 'Manchester velvet,' which he then wore, was again put on at the treaty of Paris. These clothes had never been worn since or afterwards. I once intimated to Dr. Franklin the suspicion which his wearing those clothes on that occasion had excited in my mind, when he smiled, without telling me whether it was well or ill-founded."

Censure on this proceeding.

Wedderburn must be severely condemned for thus pandering to the low passions of his countrymen, instead of honestly trying to enlighten them. So objectionable was this proceeding, which he probably prompted, and in which he played the principal part*, that Adolphus, the almost indiscriminate apologist of all the measures of George III.'s reign, is driven to confess that "the character of the inquiry and the dignity of the tribunal to whose investigation it was submitted were not duly considered. Ministers, taught by experience, ought to have known the degradation which they must inevitably incur when they elevated an individual into the rank of a personal opponent. Dr. Franklin, who had recently completed his sixty-seventh year, who was known and honoured in the most eminent philosophical and literary societies in Europe, sat, with his grey unadorned locks, a hearer of one of the severest invectives that ever proceeded from the tongue of man; and an observer of a boisterous and obstreperous merriment and exultation, which added nothing to the dignity of his judges. He had sufficient self-command to suppress all display of feeling; but the transactions of the day sunk deeply into his mind, and produced an inextinguishable rancour against this country which coloured all the acts of his

* Lord Haddington, who witnessed the scene in the Privy Council, ascribed the onslaught (the impolicy of which every one felt at the time) to some passionate quarrel that had occurred shortly before between W. and F. Many years after, Lord Loughborough being asked whether he had not taken up some violent personal dislike to Franklin, admitted it; but he was blindly keen on the American question, and political feeling may account for all the vituperation he bestowed upon the Bostonian.

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subsequent life, and occasioned extensive and ever-memorable consequences." *

Although the present exultation was unbounded, a day of repentance and humiliation was to follow:

> "Turno tempus erit, magno cum optaverit emtum
> Intactum Pallanta, et cum spolia ista diemque
> Oderit."

Bill of discovery filed against Franklin.

Meanwhile, to keep up the annoyance and irritation, Wedderburn caused a bill in equity to be filed against Franklin, under pretence of praying an account of the profits which he had made by publishing the letters from Boston, but with the real view of compelling him to discover on oath from whom and by what means he had received them. In his answer he swore "that he neither caused nor was privy to the printing of the letters, and that he had not made nor ever intended to make any profit by them." To the rest of the discovery he put in a demurrer, which, on the argument of the Solicitor General, was overruled by Lord Bathurst; but this petty warfare in the Court of Chancery was interrupted by the glare of conflagrations and the booming of artillery on the western shore of the Atlantic.

Breaking out of the disturbances in America.

It happened that immediately after the judgment of the Privy Council, by which the giddy multitude, comprehending persons in the highest station, thought that the pretensions of the Americans were for ever crushed, and that they must be brought into a state of quiet if not contented subjugation, news arrived of the combination at Boston against the consumption of taxed tea, of the seizure of several cargoes of this commodity, and of the burning of an English ship of war sent to enforce regulations for the levying of the tea duty.†

* 11 Adolph. 46. See Franklin's Memoirs, i. 185.

† The Gaspée. It is hardly possible to conceive that the continent of North America could have permanently continued an appendage of our little island, and the actual event is perhaps better even for us; but had it not been for the infatuated resolution to persist in this wretched tax for the purpose of showing that we possessed a power which all parties now agreed could not be beneficially exercised, the connection between the two countries might have long continued — till at last they amicably separated. It required a long course of wanton irritation to root out the inclination of the vast mass of the colonists in favour of the mother country, and to overcome their reluctance to abandon their regular industrial pursuits.

March 7. 1774.

American coercion bills.

A royal message was immediately sent to both Houses of Parliament, demanding measures of vengeance. The "Boston Port Bill," and the "Bill for the improved administration of justice in the Province of Massachusets Bay," were introduced, and warmly supported by Wedderburn. In answer to the argument that these bills violated charters, he boldly said: "It will be found necessary to disregard their charters if you mean to restore subordination among them; but I hope and firmly wish that even the idea of your authority being known to them will at once prevent the exertion of it. I agree with the honourable gentleman (Colonel Barré) that conciliation is desirable; but while you hold out the olive branch in one hand, you must grasp your sword with the other. Peace will be established on proper principles when there is a power to enforce it; and your authority once established, I would then drop the point of the sword, and stretch out the olive branch to the vanquished. The learned gentleman's speech," exclaimed Burke, "demands blood; the sword must convince the Americans and clear up their clouded apprehensions! The learned gentleman's logical resources surely desert him if he is obliged to call such a coarse argument as an army to his assistance. Not that I mean to cast any personal reflection upon him: I always respect, and sometimes dread his talents." *

Wedderburn's defence of them.

Appeal of murder.

On one clause of the Massachusets Bill, Wedderburn gained a decided advantage over his opponents. This suspended the power of bringing "an appeal of murder"—a proceeding which, according to the common law of England, might be resorted to by the heir of the deceased after an acquittal by a jury on a prosecution in the name of the King,—in which the trial was by BATTLE, and in which, upon a conviction, the Crown had no power to pardon. Such is the force of faction in perverting the understanding and the feelings, that an outcry was now made against the government, as if trial by jury had been to be abolished. "I rise," said Dunning,

* 17 Parl. Hist. 1207.

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"to support that great pillar of the constitution, the appeal for murder: I fear there is a wish to establish a precedent for taking it away in England as well as in the colonies. It is called a remnant of barbarism and Gothicism. The whole of our constitution, for aught I know, is Gothic. Are you, then, to destroy every part of that Gothic constitution, and set up a Macaroni one in its stead? Under a system of ministerial despotism every institution is denounced which may tend to support our rights and liberties. I wish, Sir, that gentlemen would be a little more cautious, and consider that the yoke we are framing for the despised colonists may be tied round our own necks." Nay, the grave, the enlightened, the didactic, the philosophical Edmund Burke, said, "There is nothing more true than that man has given up his share of the natural right of defence to the state, in order to be protected by it. But this is a part of a system of jurisprudence which ought to be viewed as a whole. If there is an appeal for rape and robbery, you ought to have one for murder. If this branch of our privileges is lopped off, you may soon lay the axe to the root of the tree in our own country. I allow that judicial combat was part of this appeal — which was superstitious and barbarous to the last degree; yet I cannot consent that the subject should be dealt with piece-meal — and that any thing valued by our ancestors should be taken away from one part of his Majesty's subjects, while it is retained by another." *Mr. Solicitor General Wedderburn.* — "Sir, the taxation of America was once denounced as a grievance by gentlemen opposite; but that seems to have sunk into insignificance in their eyes compared with the grievance of suspending in that country trial by battle in cases of murder. The apprehension lately professed by them of the establishment of tyranny at home by the arbitrary acts of the House of Commons, is absorbed in the danger to our liberties by a similar privation. They allow that the appeal of murder is only an effort of private revenge — that it may lawfully be stopped at any time by the appellant on receipt of a sum of money — and that, if it proceeds, the appellee, or accused, by throwing down his glove, is

entitled to have his guilt or innocence determined by a deadly combat between the parties or their champions. Certainly in times not very remote the Judges of the Court of Common Pleas did seat themselves on their tribunal in Tothill Fields to see a Writ of Right so determined. But the public was scandalised — the fight was stopped — and no attempt has been made since the reign of Elizabeth to resume this mode of elucidating truth. I must be allowed to doubt whether it is an essential part of our constitution. What a blow, then, did our constitution sustain when the *ordeal* fell into disuse, and women no longer proved their chastity by walking blindfold over burning plough-shares? But I should in vain try to reconcile those gentlemen to the proposed alteration of the law, if it were to be permanent, and I can only try to soften their opposition by reminding them that the act is meant to be temporary; so that, at no distant day, they may hope to see their fellow-subjects in America restored to the right which they enjoy, and which patriots in England so highly prize." Mr. Fox came to the rescue of his friends. He said that he was for abolishing appeals in all criminal cases, and he allowed that the circumstance of their taking away the power of pardoning from the crown, was an insuperable objection to them — but he said he condemned the partial, pitiful legislation of this clause, and he should vote against it. The clause was withdrawn upon the understanding that there should be a general act upon the subject, according to the suggestion of Mr. Fox,* — but the law continued unaltered till the year 1819, when an appellee having thrown down his glove on the floor of the Court of King's Bench, and demanded trial by battle, all such appeals were swept away.†

* 17 Parl. Hist. 1291.

† 59 George 3. c. 46. See Ashford v. Thornton, 1 Barnewall and Alderson, 405., and the proceedings against the brother of Lord Chancellor Cowper, *antè*, vol. iv.

CHAPTER CLXVII.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL HE WAS MADE CHIEF JUSTICE OF THE COURT OF COMMON PLEAS.

CHAP. CLXVII.

Feb. 2. 1775.

In the beginning of the following year, notwithstanding the measures of coercion resorted to, the exasperation and the courage of the Americans rose; they prepared for resistance, and civil war was clearly impending. In the grand debate which then took place on Lord North's motion for an address to the King, to assure him of the support of parliament in putting down the rebellion, Wedderburn answered Burke, and he still made use of very intemperate language. He treated rather lightly the distress which had arisen from the interruption to trade in consequence of the measures of government in America. "In the present instance," said he, "interests are at stake of much greater magnitude. The power of parliament is defied; a portion of his Majesty's subjects, although they have not yet formally cast off their allegiance, are actually in open rebellion. An enemy in the bowels of a kingdom is surely to be resisted, although manufactures should be interrupted and commerce should languish. The integrity of the empire is more to be regarded than the accumulation of wealth. The question is not now how we may derive most advantage from our American colonies, but whether we are to keep possession of them. The sufferings of individuals are nothing, compared with the safety of the state." * Government then had a majority of 304 to 105.

Wedderburn's speech on Burke's conciliatory resolutions.

Feb. 20. 1776.

Wedderburn's reckless advocacy may be conceived from the following account of his speech, when, after the affairs of Lexington and Bunker's Hill, regular hostilities had been carried on, and Mr. Fox moved for inquiry into the causes of the ill success of the British arms: —" The Solicitor General

* 18 Parl. Hist. 233.

defended administrations throughout, not only what they had already done, but every action of theirs, and every consequence arising from their conduct. He insisted that the war was just and expedient, that the ministers abounded with wisdom, and the army and navy in military prowess." *

Nov. 6. 1776.

"When Lord John Cavendish made his motion for "a revisal of all acts of parliament by which his Majesty's subjects in America think themselves aggrieved, Wedderburn still urged that force was the only remedy." "Take the sword," said he, "out of the hands of the governing party in America, and I have not a doubt that the country will return to its allegiance with as much rapidity as it revolted. Is it possible to imagine that the Americans themselves can sincerely wish for a continuance of their present government? From freemen they have become slaves. The Congress does not govern America, but tyrannize over it. The arbitrary power of imprisonment exercised there, is inconsistent with every idea of liberty or law. The freedom of the press is annihilated, nor is even the sacredness of private correspondence respected; nay, destruction hangs over the man who even in private conversation ventures to express a sentiment distasteful to those who, for the moment, have usurped supreme power. A due regard for the rights of your fellow-subjects imperatively requires the employment of troops to enable the oppressed Americans safely to avow their opinions, to return without danger to their duty, and to recover the blessings of the British constitution." It would appear, from the commencement of Burke's answer, that, on a recent occasion, for once Wedderburn's nerve had failed him:—"Rejoiced I am, Sir, that the learned gentleman has regained his voice, if not his talent. He would not, or could not, stand up the other night to my honourable friend who inflicted on him such grievous wounds. He lay like Milton's fallen angel, prostrate 'on the oblivious pool.' Why, Sir, would he not still remain silent instead of attempting to answer what, in truth, was unanswerable. But the learned gentleman has now called to

His speech on Lord John Cavendish's motion respecting America.

* 18 Parl. Hist. 1154.

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his assistance the bayonets of 12,000 Hessians, and, as he thinks it absurd to reason at present with the Americans, he tells us, that by the healing, soothing, merciful ministrations of German mercenaries, their understandings will be enlightened, and they will be enabled to comprehend the subtleties of his logic." The opposition on this occasion could only muster 47 votes.*

Nov. 22. 1777.

But, alas! arrived the disastrous news of the surrender of General Burgoyne and his army at Saratoga. Still the tone of the Solicitor General was undaunted. In the debate on the address, at the commencement of the next session of parliament, he scorned the notion of conciliation, saying, "The object of the Government should be to oblige the rebels to lay down their arms, and then to treat of conditions; not a hundredth part of America is in arms; to those armed, however, it is necessary to talk with arms in hand; the honour of Britain requires unconditional submission from insurgent subjects." He inveighed against the bitterness of invective that marked the modern oratory of the House, and wished that gentlemen in opposition would learn to gloss over, with more decency, their incentives to rebellion. Burke ironically praised "the learned gentleman's humanity, for first cutting the throats of the Americans, and then wishing to truck up a conditional peace with them." †

Wedderburn's warlike speech after the surrender of the army at Saratoga.

* 18 Parl. Hist. 1431—1448.

† 19 Parl. Hist. 444. Although Wedderburn considered himself bound in parliament to be a "thick and thin" defender of Ministers, no one was more sensible of their misconduct. In letters written shortly before this to his bosom friend, Mr. Eden (afterwards Lord Auckland), he says, "I am persuaded that the suspicion in America of instructions that limit the General is totally false; but surely the want of authority to direct the conduct of a General, if the indecision of his own judgment makes it necessary to direct him — the giving unlimited power without any confidence — the rewarding misconduct — are errors in system that leave us no right to blame fortune." . . . "The peculation in every profitable branch of the service is represented to be enormous, and, as usual, it is attended with a shocking neglect of every comfort to the troops. The hospitals are pest-houses, and the provisions served out are poison; those that are to be bought, are sold at the highest prices of a monopoly. It hath long been a subject of deep regret with me that Amherst is suffered to remain at home, and I am persuaded he will be sent out still, — six months too late." The misfortunes of the war preyed upon his mind. From Bath he writes, "I could do vastly well here if I could get out of the sound of the word 'America,' and if I did not dream of it while I go to sleep. The waters cure all other complaints."

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Dec. 3. 1777.

On a subsequent day Wedderburn spoke in a better spirit, which in ancient Rome might have gained him thanks that he did not despair of the republic: "The calamity, he could not deny, was great; but he could not infer from it that our condition was hopeless. We had often received checks, but the spirit of the nation had always made us rise superior to our distresses: an exertion of that spirit would, on the present occasion, infallibly rescue us from danger. Britons ever showed magnanimity in distress, and certain victory was the consequence. He wished, therefore, that gentlemen would not be cast down: before now as great misfortunes had happened to us, from which we reaped substantial advantages. As to the fact of a whole army surrendering, which had been described as unprecedented, the annals of this country had furnished a remarkable instance of it in the glorious reign of Queen Anne, when, after the battle of Almanza, General Stanhope was obliged to capitulate, with the whole of the British forces under his command. This, however, did not damp the ardour of the British nation, but urged them on to greater and more successful exertions." *

Quarrel with Burke.

It would appear that about this time Wedderburn had given personal offence, in debate, to Edmund Burke, who had required and received an apology. There is no allusion to the affair in print, but the following letter is found among the Rosslyn MSS.

"Sir,

"Mr. Fox has informed me of your obliging desire of seeing me, and giving any farther explanation which might be necessary to complete that you had given in your letter of last night. I am very sensible of your politeness and civility on this occasion. But as the letter itself was perfectly satisfactory, I do not wish you to give yourself any further trouble about the matter; and hope we shall both of us banish it entirely from our thoughts.

"I am, with great esteem and regard,

"Sir,

"Your most obedient and humble Servant,

"Edm. Burke."

Dec. 4. 1777.

* 19 Parl. Hist. 539.

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A.D. 1778.

Wedderburn now refused the office of Chief Baron of the Exchequer, because it was not to be accompanied with a peerage, and although attempts were made to soothe him, by other offers, he seems to have been very much dissatisfied with the manner in which he was treated by the Prime Minister. When the offer was first made to him through Mr. Eden, he wrote back: "My temper, you know, does not lead me to be over-anxious about gain, and my ambition has hitherto been more gratified by serving my friends than myself. You may possibly recollect that you foretold, when I accepted my office, that I should not advance my own situation by it. I imagined that the proof I then gave, and those I should continue to give, of attachment to the connection I was forming, would defeat your prophecy. It has turned out differently. In two years I found myself unsupported, and soon afterwards the indirect object of a long-concerted attack, which I was left to withstand as I could. Neither the one instance nor the other abated my zeal, and you know perfectly that I never, under any circumstance of even recent disgust, entertained the least idea of little separate cabal or faction from Lord North, but have always wished his influence and authority to be extended and maintained. I must confess to you, however, that neglect has damped my zeal exceedingly, and nothing but distress and difficulty are likely to raise it to its former pitch. In this situation I should act very imprudently, however disgusting retreat may at first seem to an eager mind, if I did not take an opportunity of extricating myself from a position where danger is the only pleasure in possession or in prospect." After some further negotiation, and an additional *solatium* offered to him, he writes to Mr. Eden: "If Lord North, having found me sometimes troublesome, has any degree of indisposition towards me, or even if he is indifferent about me, I hold it to be better to thank him, and to decline the civility he offers. In politics, it is almost the rule of the game to get what you can, and begin upon a new score; but it is a game that neither my temper nor a dread of what I should feel to be a just reproach will allow me to play. If I had no aversion to it,

you ought, as a friend of Lord North, to apprise him of the disadvantage; merely to get rid of the present embarrassment, with an opening left for a future misunderstanding, is not worth to him half what he offers. I will now suppose that Lord North's sentiments of me are as friendly as his conversation, and that he is really disposed to treat me as a person attached to him, whose interest he ought to promote. The case will then stand thus: — A judicial office of a decent rank actually vacant, — an offer made to the Attorney General, and refused, — the same offer proposed to be made to me, but that intention defeated, because the same promise cannot accompany the second offer *, — my situation, already not advantageous, somewhat the worse for this event, and Lord North proposes to make it up in some other way. In the first place, I have no inclination to accept the vacant office without any prospect of succeeding to one of those that have been usually attended with the only circumstance that in my estimation makes one such place better than another, — a place in the legislature. † At my age it would be too mortifying to renounce that idea, and I presume Lord North does not wish that I should yet disqualify myself. I should certainly feel myself much strengthened by the acquisition of an office (provided it lay on this side the Tweed), that would enable me to extend my view beyond my profession, without interrupting me in the pursuit of it. If I am not to rely upon Lord North's friendship, let the matter rest as it does, and an end be put to the appearance of connection at any time when it can be done with the least inconvenience to yourself or any other of my friends. Whatever disadvantage there is in quitting the pretensions that office alone gives, I will submit to that disadvantage if it is only to affect myself. If Lord North seriously wishes to attach me to him as a friend (and you must know better than I can how that point stands), I have then nothing to ask and no terms to make.

* I presume that a peerage had been offered to Thurlow in respect of his having been long Attorney General, while it was refused to the Solicitor.

† He refers to the chiefships of the King's Bench and Common Pleas. The only Chief Baron who has been a Peer is Lord Abinger.

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He will be as much disposed to serve me as I could wish; and if he thinks this a proper occasion to demonstrate his friendship in any manner, I shall receive it with pleasure as a favour that I may be able to return. I will make no bargain nor desire any promise, for with a friend I would rather be obliged to his inclination to serve me than to the constraint of an engagement. In either event I have no wish to keep the present vacancy in suspense one moment. It is a very material object that it should be properly supplied. The 'Customs and Excise' will pay for the folly of a Chief Baron *, and it is neither expedient nor handsome to leave it open to such solicitations as I hear are used to obtain it." An accommodation was brought about by the promise of a sinecure and the highest judicial promotion in the wake of Thurlow.

Wedderburn's practice at the bar while he was Solicitor General.

While Wedderburn held his present office, he shone forth chiefly as a politician, and we do not hear much of his efforts at the bar. However he was in the full lead in the Court of Chancery against Thurlow, and by artful statement of facts, he was supposed to have more influence over the mind of Lord Bathurst than that formidable rival could acquire by a more confident manner, and a deeper knowledge of law.† He assisted, as counsel for the Crown, in the prosecution of

* At that time, it seems to have been considered that the only business of the Chief Baron was to try smugglers. When Sir W. Garrow was Attorney General, he claimed this office on the death of Chief Baron Thomson, but Lord Eldon claimed the patronage as belonging to the Great Seal, and showed that no Attorney General had been made Chief Baron for hundreds of years. I believe that Sir Vicary Gibbs was the first Attorney General who consented to become a Puisne Judge.

† "As an advocate, his merit is very considerable. He is patient, attentive, constant to his business, and speaks with judgment, force, and zeal. He discerns very readily the strong and weak parts of his cause, and accordingly dwells on, or hastens over them. He has practised constantly in the Court of Chancery, as the court in which his knowledge of the civil law would be of most use to him; and has obtained there a degree of eminence, in which, by reason of the Attorney General's indolence, he at present stands without a competitor. He is now warmly supported by the first influence in the kingdom, namely, those who are at the head of that set of men who term themselves 'King's friends;' and it is only because the pretensions and interest of this gentleman and of the Attorney General are equally balanced, that they have both kept their places, and that the present Chancellor has been suffered to keep the Seals so long." — *Extract from a Letter printed in the Public Advertiser, March* 3. 1778, *and signed "Observator."*

John Horne Tooke for a libel, but he contented himself with examining a witness, to prove that the MS. from which it was printed was in the handwriting of the defendant, and after the conviction he did not join in praying that the infamous punishment of the pillory might be inflicted.* He contrived to avoid being mixed up in the controversy which Thurlow conducted fiercely for so many years, respecting the rights of juries on trials for libel; and at no period of his career, till the breaking out of the French Revolution, did he show himself unfriendly to the liberty of the press. His best forensic argument was on the trial before the House of Lords of the Duchess of Kingston, for bigamy, to prove that the sentence she had collusively obtained in the Ecclesiastical Court against the validity of her first marriage was no bar to the prosecution. This was distinguished by lucid arrangement, cogent reasoning, and a scientific acquaintance with the great principles of juridical procedure, — and it may now be studied both with pleasure and advantage. †

Immediately upon the close of the Session, in June 1778, Thurlow received the Great Seal, and Wedderburn suc-

* 20 State Trials, 651. 1380. *Antè*, Vol. V. Ch. CLVI.

† 20 State Trials, 464. The whole of it is too close and connected to admit of any extract being made of it — and it has the merit of great severity of composition — avoiding even both proemium and peroration. — The following is a very interesting account of this proceeding, by the Lord Justice Clerk Hope, from the narrative of his uncle, the late Earl of Haddington: — "Lord H. always spoke of W.'s oratory in the Duchess of Kingston's case as the *most accomplished* he ever heard. The case, as is well known, was got up by the Duchess herself, to show herself off, and attract notoriety after her long absence. — Of course, the result was necessarily apparent to every one from the first. The scene was the great fashionable spectacle of the day, and attracted a great concourse. W. treated the whole affair exactly as the Duchess intended it to be, a useless and ostentatious exhibition. He neglected no part of the legal argument as to the sentence of the Ecclesiastical Court (as the report shows), but made that quite subordinate to the occasion of exalting himself, and eclipsing in the spectacle the Duchess herself. In this he completely succeeded. Thurlow was coarse, vehement, and full of zeal; and on the other side, the civilians laboured away as if any thing could follow out of the affair, but the laugh in which it all ended. W. played with the whole matter — quizzed the Duchess inimitably, and with infinite wit — jeered Thurlow — bantered Dunning and the civilians, and delighted the few gentlemen and ladies who attended; and the very result of the solemn farce was what two of the persons acting in it intended, — that all London talked of the Duchess's splendid figure and appearance for her age, and of W.'s wit, eloquence, and superiority of public talent."

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A. D. 1779.

Wedderburn is Attorney General.

ceeded him as Attorney General.* This office he held two years, exercising its invidious functions with forbearance and mildness. Notwithstanding the licentious publications which now came forth, such as "Resistance no Rebellion," in answer to "Taxation no Tyranny," he wisely filed no *ex officio* information for libel; and his Excise and Customs prosecutions in the Exchequer were allowed to be conducted only with a view to punish frauds on the revenue, and to protect the fair trader.

Prosecution for deposing Lord Pigot.

He had to conduct one very important prosecution in the Court of King's Bench, which had been directed by the House of Commons against Mr. Stratton and other members of the council of Madras for deposing Lord Pigot from the Government of that presidency. His opening speech, and his reply, detailing and commenting upon very complicated transactions, were exceedingly able; but the case is now chiefly memorable for having called forth one of the earliest displays of the extraordinary eloquence of Erskine. The defendants being found guilty, Mr. Attorney, in obedience to his instructions, pressed for a sentence of imprisonment; but the Court let them off with a fine of 1000*l.* a-piece — to the high dissatisfaction of Edmund Burke, who repeatedly

* It would appear that shortly before this he had met with a great mortification in not being appointed to a sinecure, which he conceived that Lord North had promised him, and which was given to Mr. M'Kenzie. He writes to Mr. Eden: "If Lord North doubts my attachment to him after the many proofs he has had of it, your testimony, or my declaration would be of little use to demonstrate it. But I am persuaded he is convinced of it, and upon that supposition I cannot conceive a reason for his treatment of me, except an opinion that I would take it very patiently. Now, though my attachment to Lord North has been very much marked, yet I flatter myself it hath not discovered itself to be pointed either towards his office or my own, nor am I conscious of any feature in my character that should distinguish me as very liable to submit to ill usage. I have some curiosity, therefore, to know the *ratio suasoria* for cancelling an engagement to me that had been publicly known for years, — in complaisance to Col. Murray's importunity. If you can tell me any sufficient reason for not only the unkind, but humiliating neglect Lord North has made me feel upon this occasion, I shall endeavour to put up with it; but if you can find none, I must then beg the favour of you to acquaint him that I have been too much, and too warmly his friend to sink down quietly into the humble servant of his office." Mr. Eden brought about a reconciliation, which was much facilitated by the approaching vacancy in the Attorney Generalship.

animadverted in the House of Commons on the impunity thus held out to outrages in India.*

A. D. 1779.

Letter from Wedderburn to Burke respecting the penal laws against Roman Catholics.

While Attorney General, Wedderburn had the merit of assisting in the first relaxation of the Roman Catholic penal code in Ireland, and of co-operating on this subject with men opposed to him in general politics, although I am afraid that, in his old age, factious and selfish motives carried him over to the side of intolerance. Thus he now wrote to Edmund Burke: "I suspect the passage of the Papist bill † will not be so smooth as I wish; and that I shall be obliged to break the silence I meant to observe, and write something upon the test. You can, I know, and I hope without much trouble to yourself, refer me to chapter and verse for all that part of ecclesiastical history that regards our tests. Was not occasional conformity once prevented in Ireland? Has it not since — and when — been connived at or permitted by some law? Is not the sacramental test at present merely used as in England, to qualify for acceptance, without any obligation to receive it during the possession of an office? And is there not, in fact, an act from session to session to allow further time to qualify? If the answer to my questions takes more of your time than my stating them does of mine, I do not mean to transfer from myself to you the trouble of consulting an index; but in subjects of daily observation I trust more to the knowledge of one informed by fact, as well as reading (especially when I know the accuracy of my informer), than I dare trust to my own researches."

Wedderburn had now a weighty task in the House of Commons, where the defence of government chiefly fell upon his shoulders, — with some occasional assistance from his old schoolfellow, Henry Dundas, become Lord Advocate for Scotland. Wallace, the new Solicitor General, was the rough special pleader who had taken part with him in his *forray* on the northern circuit, — whom he had afterwards gratefully appointed his devil, and whom he now contrived

* 21 St. Tr. 1045—1294.

† To be introduced into the Irish parliament — having been first submitted to the English law officers.

to draw up after him as a law officer of the crown, — but who was wholly unfit to speak on any subject except a technical point of law.

His speeches urging the prosecution of the American war.

The new Attorney General took a prominent part in the debate on the first night of the ensuing session. He urged that the House ought to be unanimous in prosecuting the contest with America, and referred to the conduct of Admiral Blake, who, though he disliked the measures of the Usurper, yet being in the service of his country, called his crew together before he began an engagement, and told them, "however they might differ in opinion as to the first causes of the war, it was now their duty to see that they were not *fooled by the enemy*." *

In private, however, he was for conciliation. In a letter to Mr. Eden, written shortly before this time, he says, "The more I consider the subject (and I have thought of it constantly since I saw you), the more convinced I am of the necessity of a commission to hold out propositions to the Americans, and that the powers of that commission must be as extensive as it is possible in the nature of our government to make them. I would shut the door against no possible proposition; even the idea of a representation from America, if their minds in any corner of the continent should take that bias, should not be excluded; the power of offering places, honours, money, should be included. These things cannot be expressed either under the Great Seal or in any act of the legislature; and therefore the more open and general the commission is, the more it resembles the full powers of a minister, the more convenient I think it would be found in the execution." But no such commission was issued till the close of the contest, when, under an act of parliament, our plenipotentiaries were authorised to treat with those of the United States of America for a treaty of peace.

In Parliament Wedderburn stood forth to defend the principle on which the war with the Colonists had been begun,

* 19 Parl. Hist. 1360.

and the manner in which it had been conducted; but I cannot afford more space for these discussions, although they must be ever interesting to the whole of the Anglo-Saxon race. The contest for American Independence was substantially over, and England had to provide for her own safety against a conspiracy of European States that threatened her destruction. Franklin, instead of putting in an answer to Wedderburn's bill of discovery in the Court of Chancery, about the Boston letters, now ambassador at Paris, — had induced the French government to enter into a treaty of alliance with the republic which he represented; and the combined fleets of France and Spain not only threatened our possessions in distant parts of the world, but caused an alarm of immediate invasion at home.

June 28. 1779. His vigorous measure for manning the navy.

To meet this exigency, the Attorney General, as the organ of the ministry, brought forward a measure of great vigour in a very extraordinary manner. One night, at twenty minutes past twelve o'clock, as the House of Commons was about to adjourn, he rose in his place, and without any previous notice moved "for leave to bring in a bill to suspend all exemptions from impressment into the navy, together with the right of those impressed to sue out a writ of habeas corpus for their liberation." This in truth was to authorise the government, by a conscription, to man the navy with any portion of the inhabitants of Great Britain at their discretion. The arbitrary nature of the measure he did not attempt to disguise. He defended it on the score of necessity — urging, that when the invasion of the soil of Britain was meditated by perfidious foes, it was proper to remove all legal impediments in the way of calling every man to the aid of the state, — to hold out encouragement to the willing, — and to compel the reluctant to join in defending their native land. He stated, that there were six or eight ships of the line ready for sea at Portsmouth, which were useless for want of sailors, and that they could not be manned, if the power of impressment continued clogged with common law and statutable restrictions. "Will you then," he asked, "continue these impedi-

ments — submit to an inferiority at sea — allow your men-of-war to rot in your harbours — and trust the existence of this country to the fate of a battle on shore? So confident does the government feel in the co-operation of Parliament on this occasion, that I do not scruple to tell you, that the unrestricted impressment which this bill is to authorise is begun, — that I make this motion at this late hour, without notice, for the purpose of rendering the measure effectual, — and that I hope, by the suspension of standing orders, it may to-morrow be carried through all its stages." *Sir George Savile.* — "I must oppose the motion which is made in a manner so unprecedented, and I wonder the learned gentleman is not ashamed to avow that his reason is *concealment* — reducing the members of this House to act like midnight conspirators! Here, indeed, is vigour to make up for former supineness. The act is to be retrospective; — ministers by anticipation are actually putting it into execution, — and all the salutary forms of parliament are trampled upon, 'lest the public should be apprised of it.' The learned gentleman is not here defending the errors of others. This must be his own measure. He alone could devise it — he alone could propose it. Would the learned gentleman not let one father, one husband, one brother, or one child escape in this general scene of oppression and injustice?" *Wedderburn.* — "The honourable gentleman may easily point out hardships suffered under the usual system of impressing seamen for the navy, but the suffering of a few must be disregarded for the public safety. In times of national misfortune like the present, much must be sacrificed without scruple, and much must be borne without repining. The inconvenience is temporary, — to save us from irremediable degradation and perpetual bondage. The personal obloquy attempted to be thrown upon myself I shall contentedly submit to, if thereby I can be of service to my country." This appeal silenced all farther opposition. At one o'clock the bill was brought in, and read a first and second time. The following day it was sent to the Lords, and on the third day it received the

royal assent.* The victory of Rodney was the consequence. Notwithstanding the faults of Lord North and his colleagues in commencing the American war, and still more in conducting it, we must in candour allow that they displayed great energy in repelling the aggression of France and Spain, and counteracting the machinations of the northern powers,— so that their successors were enabled to conclude a peace, safe, and not inglorious.

It would appear that Wedderburn had other rather wild schemes for relieving the country from its difficulties. Thus he writes to his friend, Mr. Eden: "A brother projector of mine, Mr. Hart, will call upon you to-morrow morning. He is possessed of a plan for an accommodation with the Americans, which he proposes to sell upon very reasonable terms. You have got mine gratis, and I wish that you would return it to me, if plans bear a price. Mr. Hart, I suspect, is a little mad, but perhaps he may not make the worse politician for that. You may form the same judgment of me when I tell you that I am convinced the safety of the state depends upon two measures, one of which you deem impracticable, and the other, if practicable, useless. The first is a strong levy of Irish Catholics, under French or Austrian officers. I believe it will not succeed if left to the operation of a cold letter to Lord B.; but the case would be very different if some person of confidence were sent over to him, instructed to say more than will ever be expressed in any letter, public or private, of which a regular copy is to be taken. You know what I think of Col. Smith, but I would detach him upon that service, instead of letting him ride a great horse at Whitehall. The second measure is *Ld. Amherst*, and I am persuaded, if properly tried, cannot fail; some courting and some commanding may be necessary, and either of them alone will fail. If neither of these points take place, I would not give the price of Mr. Hart's plan for your places or my own prospects. I am prepared to creep back to my shell at Lincoln's Inn, and I shall not find it less easy to get in than I did to come out of it."

* 20 Parl. Hist. 962—966.

Dec. 6. 1779. Wedderburn's last great speech in the House of Commons in defence of the Ministry.

But he was shortly to be rescued from the danger of making such an experiment. His last great speech in the House of Commons, as counsel for the Ministry, was in the debate on the Earl of Upper Ossory's motion respecting the alarming state of Ireland. That country, left by the Government wholly without military defence in the new European war which had suddenly sprung up, was raising volunteer corps without the sanction of the Crown; and the great mass of the population, although still speaking the language of loyalty, manifested a clear determination by force to obtain a redress of commercial grievances, and to throw off their dependence on the British Parliament. The Opposition took the opportunity to impute this additional peril to the improvidence and imbecility of Ministers, — and the object of the resolution now moved was to have a censure passed upon them, which might lead to their dismissal. Burke, Dunning, and Fox took part in the discussion with even more than their wonted animation, and Lord North (who, we now well know, at that time sincerely wished to retire) seemed to have lost that gaiety of heart which in all past misfortunes had hitherto supported him. But Wedderburn rose at a late hour, and restored some credit to the cause of the Government, by a speech which though imperfectly reported we can discover to have been a fine one: "The honourable members opposite," said he, "no doubt considering themselves absolute perfection, are impatient to be ministers. I will not say that the noble lord who sits near me and his colleagues are not chargeable with faults. Where is there, indeed, a perfect minister, or a perfect man? The question is not of an abstract nature — but one of comparison. We ought not first to establish in our minds the idea of a perfect minister, and then judge his Majesty's present servants by that standard. It is objected to them that they depend for their existence on the favour of the Crown, and their adherents in this House. Truly, then, they hold their offices constitutionally. If they could defy the Crown and the Parliament by a great cabal in the country, or by a combination of great families, I would unhesitatingly vote for

their removal. I never wish to see a Ministry that will not respect the Throne, and that is not willing and is not obliged to call to its aid all the virtue and all the abilities of the nation. Should a contest take place, such as is anticipated by the honourable gentleman (Mr. Fox), great as his influence is, I hope the Sovereign will prove more powerful. I disapprove of all parties, whether aristocratic or merely popular, which proceed on an exclusive principle. The honourable gentleman has said that the friends he acts with are the friends of their country — that they are united — and that they are determined never to act with the present Ministers or their friends. This is a frank, and may be a useful, avowal. Whether in or out of office, I for one will most certainly set my face against such a monopoly of power." * After trying to show that the present distracted state of Ireland arose from causes over which England had no control, he concluded by saying, that as no neglect had been proved against Ministers, and if there had, this was not the time to pass a vote of censure upon them, he should give his hearty negative to the motion. †—On a division there appeared 100 ayes to only 192 noes — an increasing minority, which raised great alarm among placemen, and made Wedderburn inquire with much solicitude respecting the health and looks, the probable death or resignation, of the Chief Justices.

Alarms from decreasing majority.

In those days we have seen an Attorney General would not condescend to accept the office of Chief Baron ‡, which was indifferently paid, and not held in high estimation. Lord Mansfield had now been Chief Justice of the King's Bench above twenty years, and although he was still in the full possession of his faculties, hints were thrown out, but in vain, that it was time for him to enjoy that ease to which he was

Wedderburn longs for the bench.

* *Nescia mens hominum fati, sortisque futuræ.* Ere long Fox was to coalesce with Lord North, and Wedderburn was to be the legal adviser of the Whigs, on whose supposed aristocratic feelings he was now so severe.

† 20 Parl. Hist. 1239.

‡ When Sir W. Garrow was Attorney General, he claimed this office on the death of Chief Baron Thomson; but Lord Eldon, the Chancellor, claimed the patronage, and showed that no Attorney General had been made Chief Baron for hundreds of years. I believe Sir V. Gibbs was the first Attorney General who consented to become a puisne Judge.

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A. D. 1780.

so well entitled. There appeared a better chance of obtaining for Wedderburn the inferior dignity of Chief Justice of the Common Pleas. De Grey, who then held it, was old and feeble, and often unfit for his work; but there being as yet no fixed retiring allowance for the judges, he was unwilling to give up its large emoluments — particularly as there was an old prothonotary nearly as infirm as himself, whose place he hoped to sell before dying or resigning. The Great Seal was Wedderburn's ultimate object of ambition; but he had no immediate view to it at this moment, for Thurlow was cordially united with Lord North, and the Attorney General could hear without much excitement of the Chancellor's dangerous fit of the gout, — as promotion to an office of such frail tenure was not very desirable under a falling minister.

Feb. 21. 1780. Sir G. Savile's motion on the Pension List.

While this negotiation for the retirement of De Grey lingered, Wedderburn was much alarmed by a motion brought forward by Sir George Savile, for a list of the pensions granted by the Crown during the present reign. The abuses of the Pension List afforded an admirable subject for popular declamation down to the time when they were rectified, at the beginning of the reign of Queen Victoria, — and such a motion was always formidable to a weak Government.*

Wedderburn's barefaced defence of its abuses.

Mr. Attorney however gallantly came forward, and contended that the fund out of which the pensions were paid was to be considered the private property of the sovereign, and that the public had no right to interfere with its distribution, or to require the names of those who, by the royal bounty, partook of it. "The Crown," he observed, "having a right to deal out its bounty and charity without account, no reason but curiosity can be assigned for producing the names of pensioners. No constitutional ground can be pretended for the disclosure, as no one holding a pension so granted can sit in this House." [A voice, "There are wives of members of Parliament in the list!"] "If it be so, is this age become on a sudden so virtuous, that what is given to a

* I lost my election for Dudley in the spring of 1834, chiefly through the unpopularity cast upon Lord Grey's government by Daniel Whittle Harvey's motion respecting the Pension List.

wife is always given to the husband? The gentleman might as well say he wishes to see the list, because one member's aunt is in it, and another's third cousin. We are told, '*The Irish Pension List is printed;*' but what good has arisen from this publicity? The relations of many respectable families are to be found in it — the ladies of noble peers. Does the pain thus inflicted on individuals produce any benefit to the nation? Without obvious advantage, — to have the virtuous, the noble, the tender-hearted, the innocent, scornfully pointed at, is an invidious exercise of power:

> 'Invidiam placare paras, virtute relictâ?
> 'Contemnere, miser ——'

Would you sacrifice honourable pride at the shrine of malice, and expose all that is delicate and sensible, all that indigent and modest virtue wishes to hide, to the licentious obloquy, to the injurious misrepresentation, to the wanton criticism, to the bitter sneer, of the envious and the disappointed? Finally, it is asserted that there some unworthy persons in the list. That they may be detected, are you to place in the pillory all the innocent and meritorious objects of royal munificence? Such reformation, or such punishment, will make every feeling mind cry out, with Job, 'If you be wicked, woe unto you: and if you be righteous, yet shall ye not lift up your head!'" * The Ministry was saved by a majority of two only †, and Wedderburn looked more wistfully than ever to the "Cushion of the Common Pleas."

Sir Fletcher Norton's complaint that he was not to be made Chief Justice.

The application to De Grey was renewed, and higher terms were offered to him, to induce him to retire. While he was deliberating and doubting, news of this intrigue reached Sir Fletcher Norton the Speaker, and threw him into an agony of rage, for he had long watched the declining strength of the tottering Chief Justice, and had reckoned with absolute certainty on succeeding him. He took an

* 21 Parl. Hist. 96. I am ashamed to say that the only other member who held such language was Harry Dundas, — which induced Colonel Barré to observe that "no Englishman could be got to defend the Pension List — so disgraceful was it."

† 188 to 186.

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opportunity of venting his spleen, when the house was in a committee on Mr. Burke's bill for economical reform. He said that on the death of Sir John Cust he had been induced to accept the chair, at the instance of the Duke of Grafton, then Prime Minister, by a promise that he was by no means to be taken out of the line of his profession, and that whenever an opportunity offered, the way was to be kept open for his return to Westminster Hall. He added, "When my character, my standing, and my general pretensions are considered, I believe it will not be deemed arrogance or vanity in me to say, that I was then at the head of my profession as a common lawyer. But I hear from undoubted authority, that it is in agitation to remove a certain Chief Justice, giving him a pension, and to appoint the Attorney General in his room. I do not doubt that honourable and learned gentleman's abilities, but my assertion will be borne out, when I affirm that he does not stand fairly between me and my claims to professional advancement. I take the earliest opportunity of requiring a full explanation on the subject from the noble lord at the head of the Government. I declare, upon my honour as a gentleman, that I never meant to solicit your attention to the subject while it was quite personal to myself; but I feel that the fountains of justice should be kept pure and unpolluted, and there is now a danger that they may be corrupted. I am ready to prove that money has been offered in order to bring about this arrangement." Lord North denied that he was bound to the promises of his predecessor, and disclaimed all knowledge of any such negotiation as had been referred to.

Wedderburn's invective against Sir Fletcher Norton.

Mr. Attorney General. "I can no longer remain silent. The committee must not be left under the false impression that I am a party to any bartering for a judicial office. Whatever might have happened, I never would have accused the noble lord of a breach of promise to me; for I never will negotiate for emolument out of the line of my profession, nor for preferment in it, with the noble lord or any other minister. I have now served his Majesty ten years in the offices of Solicitor and Attorney General, and I have endeavoured to

to do my duty in them, with all the zeal and ability which I possess. I hope I shall not be reckoned guilty of presumption if I hint that, during that time, I have received frequent intimations of the intended bounty of my royal master, but that, duly appreciating the favourable opinion of my services entertained in that exalted quarter, my uniform rule has been to pursue the line of my profession, patiently waiting for its honours, if they should ever be spontaneously offered to me. The right honourable gentleman ought to know that I never treated — that I never negotiated — that I never asked for office. As hitherto, I will not go to it — it shall come to me. I will not lower the profession to which I belong, I will not disgrace my own character, by seeking sinecure emoluments as a compensation for my loss of practice*, and then place myself in the way of those who may have a just title to promotion. I know the great respect due to the character and station of the right honourable gentleman. No doubt, when he honours a committee with his opinion, he reduces himself to the level of an ordinary member; but I have been so much accustomed to see him in that chair, the dignity of which he so well supports, that I cannot separate him from his office. I therefore bow with submission to his accents, and I seek, with lowly reverence, to combat the weight of his authority. I am fully sensible of the justice of his remark, with respect to my unfitness for the bench, compared with his own great requisites. In proportion as I think highly of his professional abilities, I think humbly of my own. I am as ready to allow his superiority as he is eager to assert it. But when the right honourable gentleman quitted Westminster Hall to slide into the enjoyment of a great sinecure, and to be exalted to the high situation he now holds, he left behind him men who continued to labour with industry and assiduity, in hopes that the line of preferment would be open to them. It is rather hard upon them that the right honourable gentleman should secure a claim to return to the profession — not for the purpose of joining in the toil of it, but merely to enjoy

* Sir Fletcher was Chief Justice in Eyre.

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those posts of dignity which others in the routine of business had laboured to merit, and in their turn to enjoy. For my own part, I look upon the office of judge to be in its nature so delicate, that it is unfit for solicitation; while, at the same time, I own I have not such an opinion of my own insufficiency as to induce me to reject the appointment if it were voluntarily offered to me by those who have the just right to dispose of it. Whatever honours his Majesty may choose to bestow upon so humble an individual, I will receive them with respect and gratitude — but I never will enter into a negotiation with any minister, or exact a promise from him." Then turning to Lord North, he thus concluded: "If the noble lord had spontaneously made any promise to me, I can assure him that I never would remind him of it, or accuse him of the breach of it. I never shall be so forgetful of my own character, as to make private differences matter of public complaint. I shall never so far degrade myself, and become lost to all sense of the decorum due to the House, as to call upon them to interfere in a personal controversy. I shall never so far forget my duty to my country, as to make a private difference with a minister the ground of my opposing a beneficial public measure." *

The vote was then taken on the clause for abolishing the Board of Trade, when it was carried by a majority of 207 to 199.†

* The Lord Justice Clerk Hope, having had an account of this scene from the late Earl of Haddington and the late Lord Melville, who both witnessed it, writes to me: — "They both said the effect was most surprising. Wedderburn's exordium, though off-hand, seemed quite theatrical and studied. He was so perfectly cool that he either assumed the air of being, and was believed to be, most indignant and vehement, — or he went on with the most deliberate slowness, — as he thought suited the occasion. He spoke for two hours — never took his eagle eye off Norton, whom he was addressing — made *every word tell* — and every word was killing — he made every look and gesture last long enough to produce full effect. I recollect Lord M. said he could not understand how any one could for such a length of time go on with such sarcasm and invective, with such prolonged slowness as if he had not words, — though all knew and felt that it was done to make the torture which he inflicted more cruel."

† 12 Parl. Hist. 234—278. In allusion to this vote Gibbon says in his Autobiography: — "Among the honourable connections which I had formed, I may justly be proud of the friendship of Mr. Wedderburn, at that time Attorney General, who now illustrates the title of Lord Loughborough and the office of Chief Justice of the Common Pleas. By his strong recommendation and the

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June 2. 1780. Lord George Gordon's riots.

The government was thought to be in imminent peril, and the negotiation with De Grey was renewed with fresh energy, he rising in his terms in proportion to the importunity of those who were bargaining with him. But all these speculations were suddenly interrupted by Lord George Gordon's riots. From the timidity of the magistrates the mob was triumphant, and there was great reason to apprehend that the whole metropolis would be laid in ashes.

George III. and his Attorney General both deservedly acquired high credit for their energy in this crisis. When the King heard that the troops which had been marched in from all quarters were of no avail in restoring order, on account of a scruple that they could not be ordered to fire till an hour after the Riot Act had been read, he called a council at which he himself presided, and propounded for their consideration the legality of this opinion. There was much hesitation among the councillors — as they remembered the outcry that had been made by reason of some deaths from the interference of the military in Wilkes's riots, and the eagerness with which grand juries had found indictments for murder against those who had acted under the command of their superiors. At last the question was put to the Attorney General, who attended as assessor, and gave a clear, unhesitating, and unqualified answer, — to the effect, that if the mob were committing a felony, as by burning down dwelling houses, and could not be prevented from doing so by other means, the military, according to the law of England, might and ought to be immediately ordered to fire upon them, the reading of the Riot Act being wholly unnecessary and nugatory under such circumstances. We do not know his exact words

favourable disposition of Lord North, I was appointed one of the Lords Commissioners of Trade and Plantations, and my private income was enlarged by a clear addition of between 700*l.* and 800*l.* a year. The fancy of a hostile orator may paint in the strong colours of ridicule the 'perpetual virtual adjournment and the unbroken vacation of the Board of Trade.' But it must be allowed that our duty was not intolerably severe, and that I enjoyed many days and weeks of repose without being called away from my library to the office. I can never forget the delight with which that diffusive and ingenious orator, Mr. Burke, was heard by all sides of the House, and even by those whose existence he proscribed." — *Miscell. Works*, vol. i. p. 156.

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Wedderburn's opinion as to the legality of suppressing riots by the military.

on this occasion, but they were probably nearly the same which he used when he expounded the true doctrine upon the subject judicially soon after: "It has been imagined, because the law allows an hour for the dispersion of a mob to whom the Riot Act has been read by the magistrate, the better to support the civil authority, that during this period of time the magistracy are disarmed, and the King's subjects, whose duty it is at all times to suppress riots, are to remain quiet and passive. No such meaning was within the view of the legislature; nor does the construction of the act warrant any such notion. Magistrates are left in possession of those powers which the law had given them before; if the mob collectively, or a part of it, or any individual within and before the expiration of that hour, attempts or begins to perpetrate an outrage amounting to felony, it is the duty of all present, of whatever description they may be, to endeavour, by the most effectual means, to stop the mischief, and to apprehend the offender." * The council plucking up courage and unanimously concurring, his Majesty said that "this had been decidedly his own opinion, though he would not previously venture to express it — but that now, as supreme magistrate, he would see it carried into effect.†" The requisite orders were issued to the troops, the conflagrations were stopped, and tranquillity was speedily restored.

Tranquillity restored.

Resignation of Chief Justice De Grey.

With becoming promptitude the rioters were to be tried under a special commission, and Lord Chief Justice De Grey had notice that he would be required to preside. But he was so alarmed at the thought of such a task that he instantly sent in his resignation, although the old prothonotary, whose place he so much longed to dispose of, still "languishing did live." Wedderburn immediately claimed the chief justiceship as by law "the pillow of the Attorney General."‡ Lord

* 21 St. Tr. 493.

† According to some accounts, he said there was at all events one magistrate in the kingdom who would do his duty.

‡ When I was Attorney General, my most amiable as well as witty friend the late Lord Chief Justice Tindal, used with inimitable good humour to tell the following story: — "I had a stumbling horse that had come down with me several times to the great peril of my life, and many of my friends strongly advised me to get rid of him; but he was very quiet and a great favourite, so that

North in vain tried to induce him to remain in the House of Commons, where his services were so essential to the Government, pointing out to him his chance of the Great Seal if any thing should happen to Thurlow, and the certainty of his becoming at no distant time Chief Justice of England in the room of Lord Mansfield; but the wary Scot would not exchange an excellent certainty for contingent splendour, and very adroitly suggested that he might still have an opportunity of supporting the Administration in Parliament, for although it had not been very usual to make the Chief Justice of the Common Pleas a peer, there were at least two precedents for it in the cases of Lord Trevor and Lord Parker.

Wedderburn Chief Justice of the Common Pleas and a Peer.

On the 14th day of June 1780, a new writ was moved in the House of Commons for the election of a burgess to serve for Bishops Castle in the room of Alexander Wedderburn, Esq., appointed Chief Justice of the Court of Common Pleas, and summoned to the Upper House by the title of Lord Loughborough, Baron Loughborough of Loughborough, in the county of Leicester.*

I continued to ride him, — till one day I met Campbell as I was dismounting at Westminster, who said, 'That is a nice horse you have got, Chief Justice.' I answered, 'Yes, but he has come down with me several times, and I am advised to part with him.' 'Don't, my dear Chief Justice,' cried Mr. Attorney; 'I'll warrant you he is very sure-footed for all that.' I walked home and sold the animal next morning."—The allegations of fact on which a good story rests may not be traversed.

* At the general election in 1774 Wedderburn had been returned for Castle Rising (London Gazette, 5 Nov.), and also for Oakhampton (Ib. 19 Nov.). On the 23d Nov. 1774, Alexander Wedderburn, Esq., having elected to serve for the borough of Oakhampton, a new writ was ordered for Castle Rising. — 35 Com. Journ. 62. On the 3d of June 1778, on his becoming Attorney General, a new writ was moved for Oakhampton, and he was then returned for his old borough of Bishops Castle, which happened then to be vacant by Mr. Strachey having accepted office at the same time. — 36 *Com. Journ.* 1006.; 5 *Collins's Peerage*, 440.



CHAPTER CLXVIII.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL HE WAS APPOINTED FIRST COMMISSIONER OF THE GREAT SEAL UNDER THE COALITION MINISTRY.

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Opinion of the public on the new appointment.

WEDDERBURN'S promotion, notwithstanding the decided part he had taken in politics, was generally approved of. He was known not to be as yet very deeply versed in English law, but hopes were entertained that, renouncing party connections, he would devote himself to the duties of his new office, and that he would turn out both a learned and an impartial judge. Edmund Burke, with whom he had had so many conflicts in the House of Commons, generously sent him the following letter of congratulation and advice:—

"Charles Street, June. 15. 1780.

Letter of congratulation and advice to Lord Loughborough from Burke.

"MY LORD,

"Before I say any thing on business, permit me to congratulate you on your office and your honours. I hope you will auspicate both by your firmness in the course of real government, and that instead of bringing the littleness of parliamentary politics into a court of justice, you will bring the squareness, the manliness, and the decision of a judicial place into the House of Parliament into which you are just entering. 'Ut tu fortunam.' If you do this, no difference of sentiment or of connection shall hinder me from rejoicing in your elevation. If I know any thing of myself, I have taken my part in political connections and political quarrels for the purpose of advancing justice and the dominion of reason, and I hope I shall never prefer the means, or any feelings growing out of the use of those means, to the great and substantial end itself."

He then goes on to state certain resolutions which he urges that the Government should move in the House of Commons respecting Dissenters and Roman Catholics, and adds,—

"Until this step is firmly taken, the House will continue under the impression of fear, — the most unwise, the most unjust, and the most cruel of all counsellors." *

He presides at the Special Commission for the trial of the rioters.

Lord Loughborough began his judicial career by presiding under the Special Commission issued for the trial of the rioters at St. Margaret's Hill, in Southwark. He gained immense applause on this occasion by his charge to the Grand Jury, — most men, after recovering from their panic, being very indignant against those who had caused it, and thinking, that since the guilt of the offenders could hardly be overcharged, there need be little scruple as to the means of bringing them to punishment. But, although he could not be accused of showing any political bias, the outrages having proceeded entirely from Protestant fanaticism, reflecting men grieved that he still strove for rhetorical fame, and that he displayed the qualities, rather of an eager advocate than of a grave Judge. I copy some of the most admired passages of this celebrated harangue: —

His charge to the grand jury.

"GENTLEMEN OF THE GRAND JURY,

"If you have come here totally strangers to the transactions which have lately passed in this neighbourhood, or if it were possible for any of you who were not witnesses of them not to have heard of the devastations that have been committed, — the remnants of the flames which have been lately blazing in so many parts of the metropolis, and which must have presented themselves to you in your way to this place, will have sufficiently declared the occasion for which you are called together. His Majesty's paternal care for the welfare of all his subjects would not permit him to suffer offences so daring and so enormous to remain longer unexamined than was legally necessary to convene a jury to enter upon the inquiry. . . . . . I think it an essential part of my duty to lay before you, in one general view, a short account of those dangers from which *this kingdom* has been lately delivered. I use this expression, because it will clearly appear, that

* Burke's Correspondence, vol. ii. p. 356.

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the mischief devised was — not the destruction of the lives or fortunes of individuals, or of any description of men — no partial evil — but that the blow which it has pleased Providence to avert, was aimed at the credit, the government, and the very being and constitution of this state. . . . . . A very short time disclosed, that one of the purposes which this multitude was collected to effectuate was, to overawe the legislature and to obtain the alteration of a law by force and numbers. . . . . . How the leaders of the insurrection demeaned themselves — what was the conduct of the crowd to members of both Houses of Parliament, it is not my intento state. My purpose is to inform — not to prejudice or inflame. For this reason, I feel myself obliged to pass over in silence all such circumstances as cannot — and as ought not — to be treated of but in stronger language and in more indignant terms than I choose at present to employ. . . . . .

"Upon the 3d of June there was a seeming quiet—a *very memorable circumstance!* for sudden tumults, when they subside, are over. To revive a tumult evinces something of a settled influence, and something so like design, that it is impossible for the most candid mind not to conceive that there lies at the bottom a preconcerted, settled plan of operation. Sunday, the next day,—a day set apart by the laws of God and man as a day of rest, and as a day not to be violated even by the labours of honest industry,—in broad sunshine, buildings and private houses in Moorfields were attacked and entered, and the furniture deliberately brought out and consumed by bonfires. *And all this was done in the view of patient magistrates!*" . . . . "Fresh insults of the most daring and aggravated nature were offered to parliament, and every one who was in London at the time must remember that it bore the appearance of a town taken by storm. Every quarter was alarmed; neither age nor sex, nor eminence of station, nor sanctity of character, nor even an humble though honest obscurity, were any protection against the malevolent fury and destructive rage of the lowest and worst of men. But it was not against individuals alone that their operations were now directed. What has ever been, in all countries, the

last effort of the most desperate conspirators, was now their object. The gaols were attacked, the felons released; men whose lives had been forfeited to the justice of the law were set loose to join their impious hands in the work of destruction. The city was fired in different parts. The flames were kindled in the houses most likely to spread the conflagration to distant quarters. And in the midst of this horror and confusion, in order more effectually to prevent the extinguishing of the flames, an attempt to cut off the New River water was made; and this was followed by an attack on the Bank of England, with the view of ruining public credit." .... "In four days, by the incredible activity of this band of furies, parading the streets of the metropolis with burning torches, seventy-two private houses and four public gaols were destroyed—one of them the county gaol, built in such a manner as to justify the belief that it was impregnable to an armed force. Religion — the sacred name of religion — of that purest and most peaceable system of Christianity — the Protestant church — was made the profane *pretext* for assaulting the Government, trampling upon the laws, and violating the most solemn precepts which inculcate the duty of man to God and to his neighbours. I am sure there is no man in Europe so weak, so uncandid, or so unjust to the character of the Reformation, as to believe that any religious motive could, by any perversion of human reason, induce the most fanatical to assault magistrates, to release felons, to destroy the source of public credit, and to lay in ashes the capital of the PROTESTANT FAITH. I have now related to you the rise and progress of that calamity from which, by the blessing of Providence upon his Majesty's efforts for our preservation, this kingdom has been delivered — a situation unparalleled in the history of our country." Having excited the feelings of the jury by a gross exaggeration of the facts, and an artful insinuation that, out of tenderness to the prisoners, he had kept back much that might have been truly stated against them, he proceeds to lay down the law in a

* 21 St. Tr. 485.

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manner not quite unexceptionable, and he decidedly *misdirects*, by saying, "You are only to inquire whether the party accused is charged with such probable circumstances as to justify you in sending him to another jury;" for a Grand Jury ought not to find a true bill unless a case is made out before them against the accused, which, if unanswered, would justify the petty jury to pronounce a verdict of *guilty*.*

Censure upon him for his intemperance on this occasion by Burke.

Burke, feeling that his advice had been thrown away, observes in the "Annual Register," then under his care: — "This charge having been the topic of much conversation, we submit it to the judgment of our readers. The opinions of men respecting the legal propriety of it have been various; as a piece of oratory it has been admired; but its tendency to influence and direct the jury, and inflame their passions against men who ought all to have been supposed innocent till found guilty by their country, has been generally spoken of in terms of indignation by those who are jealous of the rights of humanity." † "Within a short month after the riots themselves," says Lord Brougham, "six and forty persons were put upon their trial for that offence, and nearly the whole of the Chief Justice's address consisted of a solemn and stately lecture upon the enormity of the offence, and a denial of whatever could be alleged in extenuation of the offenders' conduct. It resembled far more the speech of an advocate for the prosecution than the charge of a judge to the grand jury. ‡ Again, when we find a composition which all men had united to praise as a finished specimen of oratory falling to rather an ordinary level, there is some difficulty in avoiding the inference that an abatement should also be made from the great eulogies bestowed upon its author's other speeches which have not reached us; and we can hardly be without suspicion that much of their success may have been

By Lord Brougham.

* See Lord Shaftesbury's case, *antè*, Vol. III. Ch. XC.

† Ann. Reg. 1780.

‡ In the present time no counsel in opening a prosecution would venture to make such a speech, for it is chargeable not only with inflammatory topics but with a wilful over-statement of the facts of the case.

owing to the power of a fine delivery and a clear voice in setting off inferior matter." *

I do not find any complaint against Lord Loughborough in the progress of these trials, when he came to sum up particular cases to the petty jury. All the prisoners tried before him on this occasion were men of an inferior condition of life, and were clearly guilty in point of law of the felonies for which they were indicted; but as they had been urged on by fanatical zeal and the blind fury of others, Burke compassionated their condition, and wrote to the Chief Justice the following letter, so creditable to his humanity, — in the vain hope of saving them: —

Letter from Mr. Burke to Lord Loughborough, begging for mercy to the rioters who had been convicted.

"My Lord,

"I have been out of town for the greater part of the last week, and am only come hither this morning. During that time I have not seen a single newspaper. On my reading the paper of this day, I find that many executions are ordered for this week, although the stock of criminals to be tried is not exhausted; and therefore a distinct view cannot be taken of the whole, nor, of course, that selection used, with regard to the number of criminals and the nature of crimes, which in all affairs of this nature is surely very necessary. If you remember, I stated to your Lordship, when I met you at Lord North's, what had struck me on this subject, and I thought it had then his and your approbation. I afterwards mentioned the same thing to the Chancellor, and sent him a memorandum on it just before I left town. I am convinced that long strings of executions, with the newspapers commenting on them, will produce much mischief. I do earnestly beg of your Lordship, whose humanity and prudence I have no doubt of, to turn this business in your mind, and to get the executions suspended until you can think over the matter, with a proper consideration of the whole and of the several cases: for you know what a disgrace it would be to Government that the order of time of trial should settle the fate of the offenders, especially as they are low in condition, and the managers have had the wicked address not to expose themselves. I beg you to excuse my solicitude.

* Lord Brougham's Statesmen of George III., vol. i. p. 77.

† *Post*, Life of Erskine.

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I am really uneasy, and forebode no good from this business, unless your good judgment and good nature exert themselves from the beginning to the end. I have the honour to be always, with sincere regard and esteem,

"My Lord,

"Your Lordship's most obedient and humble servant,

"EDMUND BURKE.

"Charlotte Street, Monday, July 17, 1780." *

Lucky escape of Lord George Gordon.

A great example was deemed necessary, and the rioters were executed by the score.

Luckily for Lord George Gordon it was found that he had not done any thing in the county of Surrey which could be construed into an overt act of high treason, and therefore his case was not within the cognizance of this Special Commission. Had his trial now come on, the unexampled eloquence of his counsel would probably only have stimulated the rivalry of the new Chief Justice, and he could hardly have escaped an ignominious death; but it was postponed till the public mind was in a calmer state, and was then presided over by a milder Chief Justice. †

Lord Loughborough as a common law Judge.

Lord Loughborough continued in the court of Common Pleas during a period of nearly thirteen years. As a common law judge he did not stand very high in public estimation, although he displayed some important qualifications for his office and his conduct was not liable to any serious charge. He was above all suspicion of corruption,—he was courteous, patient, and impartial, — being neither led astray by the influence of others, nor by ill temper, prejudice, favouritism, or caprice. His manner was most dignified, and from his literary stores, and his acquaintance with the world, he threw a grace over the administration of justice which it sometimes sadly wants when the presiding "puisne" has spent the whole of his life in drawing and arguing pleas and demurrers. By the consent of all, Lord Loughborough came up to the notion of a consummate magistrate, when the cause turned entirely upon facts. These he perceived with

* Rossl. MSS.

† See *post*, Life of Erskine.

great quickness and accuracy, and in his summing up he arranged them in lucid order, and detailed them with admirable perspicuity as well as elegance, — so as almost with certainty to bring the jury to a right verdict — instead of wearying and perplexing them by reading over the whole of his notes of the evidence, interlarding it with twaddling comments. But it was soon discovered that he was sadly deficient in a knowledge of the common law, and no confidence was reposed in his decisions. He must have been aware of this defect himself, and if he had supplied it (as he might have done) with the energy he had displayed in getting rid of his Scotch accent, he would have rivalled Mansfield; but he did not consider professional ignorance a bar to the accomplishment of his ambitious projects. The Great Seal was his dream by night, and the subject of his daily contemplations, and this was to be gained — not by a reputation for black-letter lore, but by struggling for a high station in the House of Lords, and by watching and improving party vicissitudes. He thought that by a discreet use of the scanty stock of law he had scraped together, and by availing himself freely of the assistance of his brethren, he could decently get through the duties of his present office, and that when not engaged in the actual discharge of them, he could spend his time most profitably as well as most agreeably in preparing himself for parliamentary contests, and in keeping up his political connections.

His desire that the public should think there was business in his court.

He was, however, considerably mortified by observing the very small number of suits which came before him,—while the neighbouring Court of King's Bench was overflowing, — and he was accused (probably very unjustly) of trying to induce plaintiffs to resort to him by summing up for heavier damages than they could have got elsewhere.*

He certainly was very anxious to conceal from the public the deserted state of his tribunal, and for this purpose he would

* This was chiefly alleged with regard to "sea batteries," *i. e.* actions by sailors against their captains in the merchants' service for flogging them on a charge of mutiny, — and it might probably arise from his attempt to correct such a very questionable system.

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spin out business that he could well have more rapidly disposed of. It is related that once, being indisposed on the first day of his sittings after term at Guildhall, and having a cause paper, which with good husbandry might have lasted a week, he got Mr. Justice Buller to sit for him, — who cleared it all off in a few hours, — and, boasting of his exploit, said, in allusion to the unwieldiness and slow motion of the serjeants-at-law — the advocates in that Court — "I have been giving the *heavy blacks* a gallop this morning."

His decisions.

During the first eight years of Lord Loughborough's Chief-justiceship, for want of a "vates sacer," his decisions (unfortunately or fortunately for him) have perished, there being a chasm in the series of Common Pleas Reports, from Trinity Term, 19 Geo. 3. (1779), the last by Sir William Blackstone, till Easter Term, 28 Geo. 3. (1788), the first by Henry Blackstone, his son. Those of the five following years make one octavo volume, and among them are to be found some important and well-reasoned judgments. No constitutional question ever came before our Chief Justice, and he had chiefly to decide upon points of practice, and upon the technicalities of real property, which are unintelligible to the non-professional reader. Perhaps the most stirring case which arose in his time, was *Steel* v. *Houghton*, where the question was, "whether the poor of the parish have a legal right to glean in a corn-field, after the reapers, in harvest-time?" A benevolent association supported the right, — agitating for it, and defraying the expense of the litigation. They had in their favour one of the Judges of the Court, Mr. Justice Gould, who relied upon certain dicta of Hale and Blackstone, and above all, on the text in Leviticus (xix. 9, 10.): "And when ye reap the harvest of your land, thou shalt not wholly reap the corners of thy field; *neither shalt thou gather the gleaning of thy harvest;* and thou shalt not glean thy vineyard, neither shalt thou gather all the grapes of thy vineyard; *thou shalt leave them for the poor and stranger;* I am the Lord your God." A Chief Justice fond of popularity would have gained a great name in the newspapers and with the vulgar, by showing how his Court, when appealed to, could

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protect the starving gleaner from a wicked combination of tyrannical squires and hard-hearted farmers.

Lord Loughborough, however, acted a more manly part, and gave due weight to the principles of law and the dictates of reason. "There can be no right of this sort," said he, "to be enjoyed in common except there is no cultivation, or where that right is suppported by joint labour; but here neither of these criteria will apply. The farmer is the sole cultivator of the land, and the gleaners gather each for himself, without any regard either to joint labour or public advantage. If this custom were part of the common law, it would prevail in every part of the kingdom, and be of general and uniform practice; but in some districts it is wholly unknown, and in others variously modified and enjoyed. The law of Moses, cited as a foundation for this claim, enjoins that a part of the crop shall remain unreaped by the owner of the field; and such political institutions of the Jews cannot be obligatory upon us, since even under the Christian dispensation the relief of the poor is not a legal obligation, but a religious duty. The consequence which would arise from this custom being established as a right, would be injurious to the poor themselves. Their sustenance can only arise from the surplus of productive industry; whatever is a charge on industry is a very improvident diminution of the fund for that sustenance; — the profits of the farmer being lessened, he would be less able to contribute his share to the rates of the parish, and thus the poor, from the exercise of this supposed right in the autumn, would be liable to starve in the spring." Mr. Justice Heath and Mr. Justice Wilson concurred, and gleaning without the consent of the owner of the field was adjudged to be a trespass.*

His judgment reversed respecting the right of an unpaid vendor to stop goods *in transitu.*

Lord Loughborough's most elaborate common law judgment was in the case of *Lichbarrow* v. *Mason,* when he presided in the Court of Exchequer Chamber, on a writ of error from the Court of King's Bench. The question was one of infinite importance to commerce — "Whether the right of the unpaid

* 1 Hen. Black. 51.

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seller of goods to stop them while they are on their way to a purchaser who has become insolvent, is divested by an intermediate sale to a third person, through the indorsement of the bill of lading, for a valuable consideration?" He concluded by saying:—"From a review of all the cases it does not appear that there has ever been a decision against the legal right of the consignor to stop the goods *in transitu* before the case which we have here to consider. The rule which we are now to lay down will not disturb but settle the notions of the commercial part of this country on a point of very great importance, as it regards the security and good faith of their transactions. For these reasons we think the judgment of the Court of King's Bench ought to be reversed." But a writ of error being brought in the House of Lords, this reversal was reversed, and the right of the intermediate purchaser as against the original seller, has ever since been established.*

His refusal to try a cause respecting the mode of playing the game of *Hazard*.

The finest "scene" in which he ever took a part was acted shortly before his elevation to the Woolsack. While sitting at Nisi Prius after term at Westminster,—no doubt in consequence of some information he had before received,—he desired to see the record in a cause which was called, before the jury were sworn. The parchment being handed up to him, he perused it; then rising, he threw it indignantly on the table, and said with much solemnity:—"Do not swear the jury in this cause, but let it be struck out of the paper. I will not try it. The administration of justice is insulted by the proposal that I should try it. To my astonishment I find that the action is brought on a wager as to the mode of playing an illegal, disreputable, and mischievous game called HAZARD; 'whether allowing seven to be the main and eleven to be a nick to seven, there are more ways than six of nicking seven on the dice?' Courts of justice are constituted to try rights and to redress injuries, not to solve the problems of the gamester. The gentlemen of the jury and I may have heard of AZARD as a mode of diceing,—by which sharpers

* 1 Hen. Black. 357.

live and young men of family and fortune are ruined; but what do any of us know of 'seven being the main,' or 'eleven being a nick to seven?' Do we come here to be instructed in this lore, and are the unusual crowds (drawn hither, I suppose, by the novelty of the expected entertainment) to take a lesson with us in these unholy mysteries, which they are to practise in the evening in the low gaming-houses in St. James's Street, pithily called by a name which should inspire a salutary terror of entering them. Again, I say, let the cause be struck out of the paper. Move the Court, if you please, that it may be restored, and if my brethren should think that I am wrong in the course I now take, I hope that one of them will officiate for me here, and save me from the degradation of trying 'whether there be more than six ways of nicking seven on the dice, allowing seven to be the main and eleven to be a nick to seven,'—a question, after all, admitting of no doubt, and capable of mathematical demonstration."*

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A rule having been obtained next term for restoring the cause to the paper, it was argued at great length, and with much gravity, by the learned serjeants. *Gould, J.* "I think my Lord Chief Justice did perfectly right in refusing to try this cause. The game of hazard stands condemned by the law of England; there are many statutes that make it illegal; and nothing can be more injurious to the morals of the nation than a public discussion of this nature before an audience whose curiosity is whetted to attend the trial of such questions. The refusal to submit it to the jury was both legal and laudable." *Heath, J.* "All games at dice, except backgammon, are prohibited by law; and I think it would be

* A report was circulated that Lord Loughborough himself at this period of his life was much given to gaming—that he constantly frequented Brookes's and White's, where there was very deep play, and that before delivering this very tirade he had sat up the whole night at "hazard," having merely shaved and put a wet towel round his head before coming into Westminster Hall. The real truth probably was, that he did frequent these clubs, and occasionally looked on when Charles Fox and other great orators and statesmen with whom he associated were desperately adventuring,—so that he must have pretty well known the rules and the phraseology of "hazard;" but there is no reason to believe that he himself was ever tainted with the destructive and almost incurable vice of gaming.

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vilifying and degrading courts of justice if they were to hear, by means of a wager, a discussion of prohibited games." *Lord Loughborough.* "This was a mere idle wager; and I have no hesitation in saying that I think a court or a jury ought not to be called upon to decide such wagers. I adhere to the opinion which I expressed at the trial." *Rule discharged.* *

Lord Loughborough, while a common law judge, went the circuit every summer, although the Chiefs of the King's Bench and Common Pleas were excused this duty in the spring, — one Judge only being sent on the Norfolk and one on the Midland circuit.

Of his first judicial tour we have the following account in a letter from himself to a lady, which perhaps will not much add to his reputation for pleasantry: —

"Lancaster, 28th August, 1780.

Aug. 28. 1780. Letter giving an account of his occupations on the circuit.

"I am supposed by the newswriters to be trying folks in the north for their lives and liberties, and hanging and whipping in a very shocking way. Nothing like it, I assure you. From Durham to Lancaster, I have not missed an assembly; and the *hanging* sleeves of the misses, whose grandmothers I used to admire, are the only things I have seen that give me the least idea of *hanging*. On this western coast, where in former days the misses never appeared, and there was no fiddling nor dancing, I feel much younger than at Durham and Newcastle, and accordingly I have been twice detected in the city of Carlisle coming out of a house kept by a fine young woman, at broad daylight, after supper. It was not quite known that the Judge had a wife; and the old lady who lodges us at Carlisle, and who is blind, very gravely lamented to me that I could not marry all the young ladies of the family."

* Brown *v.* Leeson, 2 Hen. Black. 43. So Lord Mansfield refused to try a wager on the sex of the Chevalier D'Eon, Cowp. 729.; and Lord Ellenborough refused to try a wager upon a cock-fight, 3 Campb. 140., or on a dog-fight, 1 Russ. and Moody, 213. But an action has been held to be maintainable on a wager of "a rump and dozen, whether the defendant be older than the plaintiff?" We ought long ago to have adopted the provision of the civil law, whereby "sponsiones ludicræ" could not be enforced in a court of justice. I have in vain tried to induce the legislature to agree to this, and to change the absurd custom where an issue of fact is directed by a court of equity, of stating it to the jury in the form of a wager of a sum of money between the parties.

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His administration of criminal law.

From a speech which he made in the House of Lords, he might have been expected to be found very severe in dealing with criminals, so as to be placed in the category of "hanging judges." "I have always held it," said he, "to be more humane, as well for the example of others as for the enforcement of the object and intention of the Legislature, where the guilt is evident and glaring, rather to let the law take its course, than by a mistaken lenity to multiply offenders, and accumulate sacrifices at the shrine of what is falsely considered the sanguinary spirit of our criminal laws." * Yet he is said in practice to have been very mild in the trial of prisoners,—giving them a fair chance of being acquitted,—and not hurt (as judges are apt to be) if the sentence was mitigated by the Crown, after he had reported that there was no room for the exercise of mercy. † He is advantageously contrasted with Mr. Justice Gould, in an anecdote told in the House of Commons, for the purpose of illustrating the evil of discretionary punishments:—"Not a great many years ago, on the Norfolk circuit, a larceny was committed by two men in a poultry-yard, but only one of them was apprehended; the other, having escaped to a distant part of the country, had eluded the pursuit. At the next Assizes the apprehended thief was tried and convicted; but Lord Loughborough, before whom he was tried, thinking the offence a very slight one, sentenced him only to a few months' imprisonment. The news of this sentence having reached the accomplice in his retreat, he immediately returned and surrendered himself to take his trial at the next Assizes. The next Assizes came, but unfortunately for the prisoner, it was a different Judge who presided, and, still more unfortunately, Mr. Justice Gould, who happened to be the Judge, though of a very mild and indulgent disposition, had observed, or

* A. D. 1789; 27 Parl. Hist. 1066.

† He said in the House of Lords,—"I recollect a case where four prisoners had been capitally convicted before me, and I had not on a most careful revision of the trial discovered to my own mind any difference in their cases which could warrant me in reporting favourably of any one of them; yet I am happy to think that the Royal mercy was extended to one of them—on the consideration that one might be saved without injury to the effect of the law."

thought he had observed, that men who set out with stealing fowls generally end by committing the most atrocious crimes. Building a sort of system on this observation, he had made it a rule to punish this offence with peculiar severity; and he accordingly, to the astonishment of this unhappy man, sentenced him to be transported to Botany Bay.* While the accomplice was taking his departure for this remote region, without hope of ever again seeing his native country, the term of the principal's imprisonment had expired; and what must have been the notions which that little public who witnessed and compared these two examples formed of our system of criminal justice!"

Lord Loughborough, when presiding at the Assizes, was ready to exercise his authority with much rigor when the occasion seemed to require it. He threatened a jury who persisted in finding a verdict contrary to his direction with an "attaint;" he committed to prison a juryman who had got drunk, and he laid a fine of 500*l.* upon the inhabitants of Essex for the insufficiency of the county gaol.†—Still, even on the bench, although his decisions were according to law, he kept up his character as a courtier. The following anecdote, which I have on undoubted authority, illustrates the foolish excess of his insincerity. "At Durham the Chapter was wont to be a very opulent and hospitable body — not too much distinguished by qualities of a higher order than those which might befit a cœnobium of Protestant Benedictines. It happened that at an Assize at Durham, at which Lord Loughborough presided in the Crown Court, the criminal

* Buller was said always to hang for sheep-stealing, avowing as a reason that he had several sheep stolen from his own flock. Heath, acting more on principle, used to hang in all capital cases, because he knew of no good secondary punishments. Said he, "If you imprison at home, the criminal is soon thrown upon you again, hardened in guilt. If you transport, you corrupt infant societies, and sow the seeds of atrocious crimes over the habitable globe. There is no regenerating of felons in this life, and for their own sake as well as for the sake of society, I think it is better to hang."—When sitting in the Crown Court at Gloucester, he asked a lying witness from what part of the county he came, and being answered, "From Bitton, my Lord," he exclaimed, "You do seem to be of the Bitton breed, but I thought I had hanged the whole of that parish long ago."

† I knew a judge who repeatedly threatened to fine sheriffs for not supplying the judges with a sufficiently handsome coach at the assizes.

calendar was unusually light, and the noble and learned Chief Justice, in his charge to the Grand Jury, congratulated them on a result — which he could not but attribute to the county being blessed with the residence within it of such a body of men as the truly reverend chapter of Durham." *

Lord Loughborough as a Justice of Peace, and Chairman of Quarter Sessions.

Before I conclude his judicial career, prior to his holding the Great Seal, I ought to mention that he had a great and unlucky ambition to shine at Quarter Sessions. In right of his wife he was possessed of an estate in Yorkshire. Here he loved to reside in the vacation, and to act the country gentleman. Being in the commission of the peace *virtute officii*, he took out his *dedimus*, imprisoned poachers, and made orders of bastardy. Not contented with the glory to be acquired at Petty Sessions, he got himself elected chairman of the Quarter Sessions, and there he tried appeals respecting poor rates and orders of removal. On these occasions, it is said, he was almost always wrong, and the Court of King's Bench had great delight in upsetting his decisions. He seems, however, himself to have had a high opinion of his capacity for "justice-business." Thus he writes to Lord Auckland: —

May 9. 1791.

"Your letter found me in Yorkshire, employed very eagerly in a manner you would very little expect; I was attending the Quarter Sessions at Pomfret, having not only become a country squire, but an active Justice of Peace. If I could conveniently indulge my present disposition, I should never see the inside of any Court but a Quarter Session, and be very well contented to be *relegué* beyond the Trent."

But we must now behold him in a sphere much more congenial to his talents and acquirements. On the 19th day of January, 1780, he took his seat in the Upper House of Parliament.†

* Lord Haddington declared that Lord Loughborough never seemed to him to be in the position he liked as Chief Justice, and that he never concealed his desire and hope of being Chancellor, often saying that "it was as an equity judge he thought he should best succeed, as he valued greatly for that department the general principles of jurisprudence which he had acquired in early life from the civil law."

† "19 June, 1780.— Alexander Wedderburn, Esq., Lord Chief Justice of

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Inactivity of Lord Loughborough in the House of Lords during the remainder of Lord North's Administration.

Great surprise and disappointment were caused by the line which he at first took there. It was supposed that he had been made a peer expressly for the purpose of strenuously supporting the falling Government against the attacks of Lord Shelburne, Lord Rockingham, and Lord Camden. His assistance was much wanted, for although, upon a division, there was still a large majority of peers for subjugating America, and for lauding all the blunders of Ministers,—they were awfully weak in debate, having nothing better to rely upon, after the uncertain advocacy of Thurlow, than such drowsy commonplace speakers as Lord Stormont and Lord Hillsborough. Wedderburn in the House of Commons had shone in the very first rank of orators. For the last two years he had borne the whole brunt of the Opposition, and had proved that with a better cause he would have been a match for Dunning, Burke, or Fox. Become Lord Loughborough, and transferred to the House of Peers, it was thought that as a debater he would be equally active, and apparently more brilliant, like the moon among the lesser lights.

Although he attended regularly in his place, and voted with the Government, he long cautiously abstained from opening his mouth on any subject connected with party politics, and he witnessed the fall of Lord North without making an effort to save him. He plausibly pleaded the sacredness of the judicial character which he had now to support, and declared that he would never sully his ermine by engaging in Parliamentary strife. Those who knew him well, suspected him to be actuated by the consideration that he had nothing more to expect from the present Administration, Thurlow firmly holding the Great Seal,—and they

the Court of Common Pleas, being by letters bearing date, &c., created Lord Loughborough of Loughborough, in the county of Leicester, was (in his robes) introduced between Lord Willoughby de Broke and the Lord Grantham (also in their robes), the Gentleman Usher of the Black Rod and Garter King at Arms preceding. His Lordship on his knee presented his patent to the Lord Chancellor on the Woolsack, who delivered it to the clerk, and the same was read at the table: his writ of summons was also read. Then his Lordship took the oaths, &c., and was afterwards placed on the lower end of the Barons' Bench."—*Lords' Journals.*

foretold that he would unscrupulously mix in the fray when he had a prospect of sharing in the plunder. From his elevation to the peerage till the formation of the Rockingham Administration, on Lord North's resignation in March, 1782, he is only stated to have spoken twice: first, respecting the liberation of a Russian officer, apprehended for having been engaged in Lord George Gordon's riots *; and again on a bill for regulating the administration of justice in the Isle of Man.† Even in the debate on our rupture with Holland, and our disputes with the Northern Powers respecting the search of neutral ships, he had remained silent, although from his acquaintance with international law he might have been expected to have supported the belligerent rights of Britain — without subjecting himself to the imputation of being a political judge, — which he now pretended so much to dread. He boasted that his great object was to keep down arrears in his Court.‡

March, 1782. Letters from Lord Loughborough to Mr. Eden on the state of parties.

The following letters written by him to Mr. Eden in the beginning of 1782, give a striking view of the distracted state of affairs shortly before the resignation of Lord North: —

"Speculations are of course the consequence of last night's division. Those I have seen think the Admiralty must change, but you know as well as I do how strongly against probability that station has continued unaltered. You will hardly believe that I am as little informed as I am interested in the subject. The only pursuit that gives me any real satisfaction is to fill the little corner of Westminster Hall allotted to me with some credit." § . . . . . "I arrived in town the night before last, and, as the newspapers will inform you, had yesterday a most gracious reception, but no particular conversation. Lord Hillsborough was very desirous of entering fully into discourse, but it was soon interrupted, and our

* 21 Parl. Hist. 750. 752.

† 22 Parl. Hist. 561.

‡ This achievement seems to have been accomplished with very slight labour. He thus on one occasion explains his reason for leaving his villa at Mitcham during term time, and taking up his residence in London: — "I found I could not manage the little business of Westminster Hall in this term without sometimes looking at a book and meeting in an evening, so that I have betaken myself to town for a month."

§ 22d February, 1782, on General Conway's motion for putting an end to the American war, when Ministers had a majority of *one*.

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appointment to meet again has not yet taken place. I saw Lord N. this morning, and had a very frank, but at the same time a very loose and desultory conversation with him. The Chancellor was at court, but did not seem to have much curiosity about him, nor a much clearer countenance than when I last saw him.* It seems to me that there is a great disposition to think lightly of the difficulties of Government on your side of the water †, and to suppose that the first wish of every Lord Lieutenant is to be easy at home. It will require many conversations to oppose prejudices so very mischievous. Both the persons I talked to seemed to start from the subject of the "volunteers," as if they were afraid to know too much of it. Lord N. told me he had a great deal to say to me, and that we must meet soon, but fixed no time, though I almost tendered myself to go down to Busby with him. I shall be glad to know whether you suppose your letters undergo any examination, for if they do I shall be very much puzzled to correspond with you." ‡ . . . . . . "On Wednesday last it was given out with great industry, and the rumour was very eagerly adopted, that Lord N. and Lord S. had resigned. The same thing was continued yesterday, but the credit of it sunk towards the evening, especially as Lord N. had given the lie to it by his appearance in the House of Commons. It was a story raised I believe to favour the division for Opposition on the motion of this evening, which is to the same effect as the last. From all the intelligence I could learn last night the majority is likely to be better for Government than it was last week. Several country gentlemen, alarmed at the consequences of their own votes, have, I hear, been with Lord N. to assure him of their support. Last night at White's, where I supped, no man in Opposition would accept a bet offered on each number that the majority would be 10, 20, 30. Lord Coventry offered to take 15, 30, 45 — declaring that the country gentlemen were the true rats, and had gone back to their old haunts. Rigby was in very high spirits, and exulting in the confession that the landed interest were the support of Lord N. The true state of things, as far as I can judge, is, that Lord N. on the unfavourable appearance of the House has desired that any arrangement might

* Jealousies between these legal dignitaries seem already to have sprung up, and Thurlow, looking forward to a ministerial crisis, was already afraid that Wedderburn might be intriguing to succeed him.

† Mr. Eden was then Chief Secretary in Ireland.

‡ Notwithstanding the liberties used by Sir James Graham at the Post Office, I do not think that in our own times there would be a suspicion of Government surreptitiously prying into letters written to or from the Irish Secretary.

be without regard to him, — without taking any part in the attempt to make it, and at the same time with a declaration that he would do his duty to the last moment. The charge of this arrangement has been committed to the Chancellor. Lord G. and Lord W., and afterwards the Duke of G. and Lord C^{n}., have all excused themselves, as you would naturally suppose they would, — having each of them retreated from difficulties much less than the present. What other applications have been tried I know not, though I am certain that there have been others. The only part I have had in it is, that I have told Lord N. and Lord Ch^{r}. severally, that they begin at the wrong end, and that the first object is to strengthen the weakest post by offering Lord Howe the Admiralty, which he cannot be weak enough not to accept. This done, there would be scope and time to proceed with the rest. Neither of them contradicted my idea. But the first gave me to understand that it was not at present in his hands; the second admitted by his manner that it was, but gave me no reason to conjecture what his plan of operations might be. Supposing the division to-night more favourable to Government than it has lately been, my conjecture is that the present negotiations will prove abortive, and that Lord N. will again be obliged, reluctant and unequal as he feels himself to the arduous undertaking, to engage with the public difficulties, and that he will take no warning from what has happened, nor use any exertions to strengthen his Administration. I saw him last Sunday, and have offered him every attention in my power. He is sensible of the kindness expressed for him, indifferent in appearance to any demonstrations of zeal for him as minister, and in as cheerful spirits as ever you knew him to possess. In a state to be plagued to death by the folly, ingratitude, and perverseness of the people who come to him, and to be tortured by the shameful and wretched exhibition which the country makes, I am not sure whether all this accumulated distress does not, in some degree, lighten the misery that another cast of mind would expose most men in his situation to feel." . . . . "There are men here of great consideration, who think that if we had peace elsewhere, we should be obliged in sound policy to teach some of your gentlemen to treat us with more respect; that it is absurd to suppose Ireland can be independent, and that the option to be exercised on your side is to be dependent on France or on England. According to that idea, whatever language we may tolerate or overlook, we must do no act that can admit the high-sounding language of Irish patriots to be constitutional. Without

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discussing it, this is an opinion (you may depend upon it) that prevails very much in this country; and those who think most loosely on the subject are the present Administration and their friends. Wherefore it is very just that they should be popular on your side of the water, in comparison of those who will have most sway should they be removed." . . . . "Out of respect to the curiosity you must have to hear from hence at this singular period, I write to you by this post, though nothing has happened to make a postscript to my last letter necessary. My information about the persons sent for, and consulting, was not quite accurate: his Majesty sent early in the morning for Lord Storm., who was afterwards sent to the Chancellor; and Lord N. did not go to St. James's till both the others had been there. A great statesman, and your constant correspondent, surmises that there is an attempt to make some arrangement, and that the Chancellor has had authority to negotiate. He further supposes that Lord Gower may be persuaded to lend himself for a little time in the Treasury, till matters can be settled. I don't imagine this is better founded than upon the observations which the whispering about the Woolsack always occasions. The Chancellor talks a very manly language in censure of the vote of Wednesday; but I think it not unlikely that he may follow that with a comment on the neglect which produced that vote. The answer seems well guarded, and not liable to much attack; but on Monday either that or an attack on Lord Sandwich is expected from Fox, as Lord N. has put off his taxes. I went this morning to show the goodwill which, in spite of all the reasons against it that you know, I really feel for him, and saw him for a minute, with as cheerful and as lively a countenance as if he had been at the head of his table. Hatsell says he will give fifty guineas to receive a guinea a-day while Lord N. remains in the Treasury. There were some unlucky incidents in the division, which must have arisen from the bad conduct of the debate, on the part of Government. Mr. Wild, with a million of the loan in his pocket, was with much difficulty dragged to the House, but voted against Lord North. Sir Gilbert Elliot's speech did much mischief, for Sir William Dolben had declared himself satisfied with the Minister's declaration, and that he should therefore vote differently from the vote he had given on Friday; for which he was, as you may imagine, exposed to much attack, and pelted, as an example to deter others; after which Sir Gilbert got up, professing himself *unsatisfied*, though a hearty friend in general to Administration. The effect of the comparison between

the two was to fix all the wavering well-wishers in the same line with Sir Gilbert. I have no patience with him, for he cannot be the dupe of his own reasoning so much as to convince himself that a vote of the House of Commons is an ingredient for making peace. I hope all the mischief we are making here will come too late to breed any disturbance to you in Ireland." *

While these struggles were proceeding, Lord Loughborough looked on as a curious spectator, considering that peradventure they might bring him some good; and although he always voted with Lord North, and professed great attachment to him, he seems not without secret satisfaction to have witnessed his fall.

Lord Loughborough's second marriage.

Meanwhile he was solaced by an auspicious event in domestic life. Having been some time a widower †, he announced to his friend Sir Ralph Payne (afterwards Lord Lavington), his resolution again to enter the holy state of matrimony, and received from him the following congratulation:—

"Broadlands, Sept. 16. 1782.

"I trust, my dear Lord, that you are too well satisfied of the credit which I give you, in my heart, for every testimony of friendship which you have ever shown to me, to doubt the sense which I entertain of this last instance of it; and that it is as unnecessary to assure you of my gratitude as it is to make any protestations of the sincere pleasure and satisfaction which Lady Payne and I feel at the very kind information which you have communicated to us. You have such sufficient securities, my dear Lord, for your own future happiness, that it would not be more impertinent in me to offer to compose speeches for you in the House of Peers, than to persecute you with my prayers for your enjoyment of all the blessings that the world can afford. But there is one prayer which I cannot forbear to offer, which is, that you would realise the happiness of which you have as yet only held out a prospect to Lady Payne and myself, and give us the earliest opportunity that you can of paying our devoirs, where you may imagine us not

* These letters are not dated, but evidently refer to the debates and divisions in the House of Commons, from 27 Feb. to 19 March 1782. See 22 Parl. Hist. 1087—1214.; Adolphus, vol. iii. 325—343.

† The first Lady Loughborough died 15 Feb. 1781.

little desirous of a better acquaintance than can be formed even from your own report. Until you can procure us this pleasure, we shall be forming a thousand conjectures and imaginations, which, with all the pleasure and partiality that will attend them, will be teasing, while attended with the impatience that we feel upon the occasion. Not having the Peerage at my fingers' ends, nor Lord Palmerston having it in his library, I am at present at some loss to identify the lady to whom you allude in your letter. I only hope that she is not a sister of Lord Courtenay, who gave the ton last year to the festivities of Fonthill, where, I understand, she was so much the general subject of panegyric amongst her own sex, that it would be a great pity that she should be now pulled to pieces by any Lady Betty or Lady Ann, as she probably might, for making a monopoly of your Lordship, and where she was so much admired by the men, that poison must probably be the lot of any one who should presume to think of appropriating her. Don't think that this anecdote is the result of any indiscreet investigation consequent to your letter. I assure you that I heard it in Dorsetshire before I knew that you had any interest in any lady of that name.......

"With respect to Brighthelmstone, I should ill deserve that opinion which I am very solicitous to obtain, were I to utter the least complaint, or entertain the least dissatisfaction at your breach of an engagement which is now so much more honoured in the breach than the observance. I only hope that Lady Loughborough will hereafter recollect that a wife ought, in equity, to be as responsible for such debts of her husband as she is capable of discharging, as a husband is in law bound for those of his wife; and that her ladyship and you will, at proper seasons, think it just to liquidate with interest a demand, for the satisfaction of which we are contented to wait some time longer.

"Your affectionately attached,

"RALPH PAYNE."*

The marriage between Lord Loughborough and Miss Courtenay took place soon after, and proved a very comfortable one, although the bridegroom had not much tenderness in his nature, and placed his happiness chiefly on the stirring events of public life.

* Rosslyn MSS.

March 1782. Lord Rockingham's Administration.

On the formation of Lord Rockingham's Administration Lord Loughborough was astonished to see Thurlow still in possession of the Great Seal. From this time there was much coldness, and before long there was open hostility, between these former friends and colleagues. The Chief Justice saw with jealousy and envy the Chancellor's unbounded favour with the King, and perceived that there was no hope for himself, unless the royal will could be thwarted. He therefore lay by for an opportunity of engaging in some plot for storming the Cabinet.

During Lord Rockingham's short Administration he assisted the Chancellor in defeating the two Government measures of the Contractors' Bill*, and Burke' s Economical Reform Bill†, — and from factious motives he opposed the bill for declaring Irish independence, — arguing with considerable force the impossibility of the two countries continuing long together on the new footing.

June 1782.

Now he had his first open conflict with Thurlow—moving, by way of slur upon the Government for omitting to do so, an address of congratulation to the Crown on Lord Rodney's victory. The Chancellor at first violently opposed it, but was obliged under some modification to concur in it.‡ Lord Loughborough's position meanwhile was very irksome; for if he supported the Government, he aided men with whom there seemed no chance of his holding office, and if he helped to turn them out, this would only humour the King, and make Thurlow more powerful. Suddenly the face of affairs was changed by Lord Rockingham's death and the premiership of Lord Shelburne. On this occasion he received the following letter from Burke, showing an intimacy between them which by and bye facilitated the "Coalition:"

Letter from Mr. Burke on the death of Lord Rockingham.

"MY DEAR LORD,

"I received your very kind and obliging letter from Beechwood, and I thank you for it very sincerely. It was much the more acceptable on account of the place it came from, combined with the

* 22 Parl. Hist. 1379. † 23 Parl. Hist. 144.

‡ 23 Parl. Hist. 67. 72, 73.

remembrance of the worthy master. I met him since in not so pleasant a place, under St. James's Gate, and had a hearty shake of the hand with him. It was very good of you both, in such a situation, formed for every kind of calm satisfaction, to throw a thought upon a scene so full of confusion as this, and on my poor part in it, which, contrary to all order, is as troublesome as it is inconsiderable. I remember several years ago a few most pleasant days that I passed with you and Sir John under his noble beech trees, in a manner and with thoughts perfectly remote from my course of life, and the train of my ideas. Since then many winters have snowed upon my head without making it in proportion wiser, and God knows whether I have done good to others in any proportion to the innumerable unspeakable vexations which I have suffered during that whole time. I cannot say that these troubles were not mixed with many consolations. But it requires at least my whole stock of philosophy to bear up against the events which have lately happened, and which have indeed gone very near to my heart. I have lost and the public has lost a friend. But this was the hand of God manifestly, and according to the course and order of his providence. I had no hand in it. But to think that all the labours of his life and that all the labours of my life should *in the very moment of their success* produce nothing better than the delivery of the power of this kingdom into the hands of the Earl of Shelburne—the very thing, I am free to say to you and to every body, the toils of a life ten times longer and ten times more important than mine would have been well employed to prevent,—this, I confess, is a sore, a very sore trial. It really looks as if it were a call upon me at least wholly to withdraw from all struggles in the political line. This was the first impression on my mind. I do not know how long it will continue. We are naturally changeable. There is a great deal of difficulty at my time of life and in my circumstances in changing, even to a course that would seem more suitable to decline and disappointment. On the other hand, if we go on, there must be some sort of system. If so, all is to begin again. A great part of our construction is (what I call) sound. But there is a great, and I fear irreparable, breach. With what to build it up, that will bind and coalesce, I do not see.

Indeed I do not see any thing in a pleasant point of view. I bear up, however, better than my present style would seem to indicate. I do so rather by force of natural spirits than by the aid of reason, though now and then reason whispers some sort of comfort even by suggesting one's own blindness, and that there is

good ground to think, whatever appearances may be, that in some way or other, at some time or other, or in some place or other, the effect of right endeavours must be right. 'Nota est illis operis sui series; omniumque morum per manus suas venturarum scientiæ in aperto est semper; Nobis ex abdito subit.'

"Your Lordship sees that like Hudibras, discomfited and laid in the stocks, I

> 'Comfort myself with ends of verse
> And sayings of philosophers.'

"I wish you most heartily a pleasant circuit, moderate litigation, and as little hanging as possible. Alas! it is not worth while to swing out of the world those you have to send away. When shall we have a *grand* Jail Delivery?

"I am, with great esteem and regard,
"My dear Lord,
"Your most obedient humble servant,
"EDMUND BURKE.

"Whitehall, July 17, 1782.

"Here still—but out in law.

"I forgot to tell you that I had a most friendly note from Adam Smith at his departure for Scotland."*

Lord Shelburne's Administration.

Thurlow's hold of the Great Seal seemed at first firmer than ever, for, instead of leading the Opposition, he acted cordially with the Chief Minister; but before long a ray of hope dawned upon Loughborough. Fox was so exasperated against Lord Shelburne for overreaching him, that he vowed he would never serve with him again, and declared that he considered Lord North a less obnoxious character; while Lord North was dissatisfied by observing that the King really seemed to have gone over to the Shelburne Ministry, and was estranging himself from those who had stood by him during the whole American contest. If there could be a coalition between the Rockingham Whigs, now called "Foxites," and the party of Lord North, they would greatly outnumber the adherents of Lord Shelburne, the King must surrender, and the Great Seal must be wrested from Thurlow. In a letter written by Lord Loughborough while on the summer circuit of 1783, he

* Rosslyn MSS.

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A.D. 1783. Shrewsbury, July 24.

shows his growing impatience of Lord Shelburne: "The people I have seen, and the places I have passed through, are all hostile to the Administration in their general course of politics. One would not therefore form any judgment of the disposition of the country from the appearances in this quarter; but I hear from all quarters that there is a most general opinion of the incapacity of the Minister. The shop-tax is universally odious; and following so soon the window-tax, which is much more felt in country towns than in London, both sums are added together when men compute the additional burden, and the amount is very difficult to bear. If there is likely to be any thing of a stirring character in Parliament, I shall hasten my return, though I am sure my absence was of very liitle consequence in the late debates, where the superiority of our friends appears very conspicuous in Mr. Woodfall, — imperfect as his reports now are."

August 31. 1783.

However, Parliament was prorogued without any opportunity of striking a blow; and Lord Loughborough, after the circuit, retired to Buxton, labouring under disease, and much depressed in spirits. Thence he wrote to a friend: —* "This place has hitherto been of no service to me, and I am heartily tired of the unsuccessful experiments that the physician has made to prevent the waters from disagreeing with my stomach. I am fully persuaded I should enjoy more health and happiness from a moderated retirement than I can ever find in the increase of public business. This idea has been gaining upon my mind for some time, and I am so far from feeling the least anxiety to remove any obstacle that prevents my being irretrievably fixed in a political situation, that, were the way to it perfectly open, I should be very unhappy to enter upon it."

Getting out of this short fit of depression, he was more eager than ever for the promotion he had been deprecating, and, Parliament again meeting, a certain prospect was held out

* 19 Parl. Hist. 1360.

of his ambition being speedily gratified by the famous "Coalition."

A. D. 1783.

Formation of the "Coalition."

There was no regular negotiation between the Tories and the Foxite Whigs, and no formal treaty was signed. Both hating the Minister, they were gradually and insensibly united. The energy of Fox was chiefly effective in consolidating the Coalition; but there is no doubt that the subtlety of Loughborough powerfully contributed, by removing the scruples of Lord North, over whose mind he exercised considerable influence. The grand united attack was to be made on the articles of peace with France and America.

The Lord Chief Justice of the Court of Common Pleas now buckled on his armour, which had almost become rusty, and, throwing aside all his pretended scruples about the sacredness of the judicial character, mixed in the thickest of the fray.

Feb. 17. 1783. Lord Loughborough's speech against the peace.

The debate on the "Preliminaries" coming on in the House of Lords, there was a struggle between Lord Loughborough and the Prime Minister which should have the advantage of following the other; but the latter was forced up, and the former is said to have exclaimed, — "The Lord has delivered you into my hand." He immediately followed, and his speech was very masterly. It is reported at considerable length, — but the reader will be contented with a few detached extracts from it. Thus he began: — "I could not in fairness rise to offer any opinion in this debate till I had the explanation and the defence of the First Minister of the Crown, for he has the fullest information of all the circumstances under which this treaty has been concluded, and he possibly might have removed my objections to it. But having attentively listened to him, I am sorry to say that my objections are strengthened. I now clearly see that by the fault of the Government in carrying on these negotiations the country is disgraced, and, I fear, is undone. I require only one point to be admitted — that the condition of the kingdom was not so desperate as to oblige us to accept any terms of capitulation which our enemies chose to offer. Neither the Prime Minister nor his colleagues have defended their con-

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duct by denying this position, and they have talked of the preliminaries, not as a capitulation, but as a treaty. When two powers at war have opened to each other their desire of making peace, it is obvious that some point must be fixed as the basis of the negotiation — either the actual state of possession, or the state of possession before the commencement of hostilities, or the state of possession at some intermediate period. But each of these has been considered too favourable to be accorded to us, and the only basis of this treaty has been, to correct what was distasteful to France in any former treaties which we have concluded with her." He begins with the stipulation allowing the repair of the fortifications of Dunkirk, which by the treaty of Utrecht, by the treaty of Aix la Chapelle, and by the treaty of Paris, were to be demolished — thus putting our enemies in the undisturbed possession of a great port in the very mouth of the Thames — which in time of war must be fatal to our commerce, and must expose us to the peril of invasion. * He then proceeded to the removal of the restriction to fortify St. Pierre and Miquelon in the West Indies, and Pondichery in the East, with the extension of the right of fishery on the coast of Newfoundland. He then goes to Africa, and contends that British interests had been wantonly sacrificed in every quarter of the globe. He was particularly severe upon the article, by which, upon evacuating New York, Long Island, and the positions we retained in America, we should deliver up all houses, goods, and persons found there. "If," said he, "this were the capitulation of a besieged town, it would be scandalous to surrender on such terms. At the lowest ebb of distress, reduced and almost undone, the necessity can hardly be conceived, that should oblige a state to subscribe to an article evidently inserted for no other purpose than to blast for ever the hitherto untainted honour of the nation. Francis I., vanquished and captive, wrote to his subjects, 'All is lost except honour,' and the spirit of that sentiment preserved his kingdom and restored his fortune. If we had

* It is amusing to observe what a bugbear Dunkirk was to us for a century, and how harmless it has been.

implored, in this instance, the aid of France and Spain, though our enemies,—the generosity of these two great countries would have interposed in favour of our fellow-subjects whom we have deserted. In every treaty that has terminated a civil war, the articles of mutual forgiveness and restoration have ever been the easiest to settle." After giving the instance of the Catalonians by the treaty of Utrecht, and the Irish Roman Catholics by the treaty of Limerick, he continues: "In ancient or in modern history, there cannot be found a parallel to this shameful desertion of men who had sacrificed all to their duty, and who perish by their reliance on our good faith. There is even a horrible refinement in the cruelty of the article; they are told that one year is allowed them to solicit from the lenity of their persecutors that mercy which their friends refused to secure to them — to beg their bread from those by whom they have been stripped of their all, and to kiss the hands that have been reddened by the blood of their parents." He concluded by denying the power of the Crown to cede British territory in our possession without the authority of Parliament.* Upon a division, Ministers had a majority of 13 in the House of Lords, but there was a majority against them of 17 in the House of Commons,—for censuring the articles of peace, and Lord Shelburne was driven to resign.†

Feb. 22. 1783.

Lord Loughborough, disappointed of the office of Chancellor, made first Commissioner of the Great Seal.

Loughborough expected to be Lord Chancellor in three days. But, amid the difficulties opposed by a hostile Court to the formation of a new Government, there was an interregnum of five weeks—at the end of which the Coalition leaders found it necessary to agree to put the Great Seal into commission, the King being so decidedly adverse to have any keeper of his conscience except the pious Thurlow, — and our baulked aspirant was obliged to be satisfied, for the present, with a slight foretaste of his future greatness, by being made

* This question I have previously discussed in the Life of Lord Thurlow. Vol. V. p. 549.

† 23 Parl. Hist. 421. 435. 571.

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First Lord Commissioner.* His brother Commissioners were Sir William Henry Ashurst, a Justice of the Common Pleas, and Sir Beaumont Hotham, a Baron of the Exchequer. The Great Seal was delivered to them on the 7th of April, 1783, and two days after they were sworn in, and took their seats in the Court of Chancery. †

* The following is the Duke of Portland's announcement to Lord Loughborough of his appointment:—

"My Lord,—You will receive from the Secretary of State an official notice of his Majesty having been graciously pleased to appoint you First Commissioner for the Great Seal, and of his having signified his pleasure that you attend him to-morrow at the levee at St. James's for the purpose of receiving it. But I cannot refuse myself the satisfaction of communicating to you this event, in which I flatter myself that the part I have taken is a demonstration of my respect and esteem for your Lordship, and a very convincing proof of the sense I entertain of my duty to the public.

"I have the honour to be, with great regard,
"My Lord,
"Your Lordship's most obedient humble servant,
"PORTLAND."

"I had the King's commands to offer the Speakership to Lord Mansfield; he was at dinner when I called, and therefore I cannot inform your Lordship of his intention in that respect."—*Rossl. MSS.*

Although Lord Mansfield was Speaker of the House of Lords while the "Coalition" lasted, Lord Loughborough had all the juridical patronage usually belonging to the office of Chancellor.

May 26. 1783.

The following is a letter to him from the Duke of Portland respecting the making of silk gowns:—"My Lord,—On Wednesday last, I received the King's commands that Mr. Peckham, Mr. Scott, and Mr. Pigot should be appointed of Counsel to his Majesty, which I should have signified immediately to your Lordship, had it not appeared necessary, in consequence of his Majesty's gracious condescension in favour of Mr. Erskine, to obtain that gentleman's consent to the precedence which Mr. Peckham very naturally wished to recover, and in which Mr. Erskine most readily acquiesces. I therefore should have desired your Lordship to have ordered a patent of precedence to have been made out for Mr. Peckham, giving him rank immediately after the last of the King's Counsel, and before Mr. Erskine; and the proper instruments for appointing Mr. Scott and Mr. Pigot of Counsel to his Majesty in the usual form. But what I heard from your Lordship to-day in the House of Lords makes an alteration in point of form necessary, and, I should apprehend, would require a patent of precedence for Mr. Scott, to restore him to the rank which his seniority at the bar entitles him to over Mr. Pigot, as both their names were mentioned in the same minute to the King, though I understand that Mr. Scott is disposed to decline that advantage in the case of Mr. Erskine, upon account of his having been offered to his Majesty's consideration some days sooner than the three gentlemen for other appointments. I have to-day the honour of acquainting your Lordship with his Majesty's pleasure.—I have the honour, &c., PORTLAND."—*Rossl. MSS.*

† Cr. Off. Min. Book, No. 2. fol. 29, 30.

CHAPTER CLXIX.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL THE KING'S ILLNESS IN 1788.

CHAP CLXIX.

A.D. 1783.

LORD LOUGHBOROUGH continued First Lord Commissioner of the Great Seal rather more than eight months,—during which time he forsook the Court of Common Pleas, and devoted himself to the Court of Chancery, but no cases of much interest came before him*, and I shall postpone my view of him as an Equity Judge till he sat there singly as Lord Chancellor. One good act which he did as Lord Commissioner should be commemorated—he gave a silk gown to Erskine—and it should be stated to his credit, that during his whole career he was always disposed to show respect for men of genius, although their political principles might differ from his own.

Notwithstanding his disappointment, he put forth all his strength to support the "Coalition" in the House of Lords. He did not preside there, the woolsack being occupied by Lord Mansfield as Speaker, but although he was not formally a member of the Cabinet, he was considered the organ of the Government. Here the storm was at last conjured up which proved fatal to the "Coalition;" but great comparative tranquillity for some time prevailed, the "Opposition," headed by his Majesty, confining their efforts to the Lower House.

April 14. 1783. Loughborough opposed to Thurlow

Meanwhile Thurlow showed his factious hostility by opposing the bill for establishing the judicial independence of Ireland, which had been introduced by the late Government when he himself held the Great Seal. He particularly com-

* See the decisions of the Lords Commissioners Loughborough, Ashurst, and Hotham, 1 Brown's Chancery Cases, 267—337. They affirmed several decrees of Lord Thurlow reheard before them, and disposed satisfactorily of a good many questions on the law of legacies, and respecting dower and curtesy. All the three generally deliver their opinions; but Loughborough must have ruled the Court, for the other two were very incompetent.

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A. D. 1783. on the bill for declaring the independence of Ireland.

plained that no sufficient explanation had been given of the principle of the bill, or of the measures which were to accompany it. Lord Loughborough answered, "that the Ministers, who were the authors of the bill, could not with much decency require to be informed of its grounds and tendencies, and insist on knowing the policy of which it forms a part." Thurlow still growled, but lay by for a better opportunity to avail himself of the dislike of the present Administration, which he knew lurked in the hearts of a large majority of the House.*

Motion against Lord Loughborough in the House of Lords.

Next came a motion which Thurlow had ingeniously concocted, although decency prevented him from appearing openly to support it; a personal attack was made upon Lord Loughborough for being a Commissioner of the Great Seal while he held the office of Chief Justice of the Common Pleas. It was put into the hands of the Duke of Richmond, who, affectedly disclaiming any intention of giving pain to any individual, pointed out very invidiously the evil consequences of the present arrangement. He dwelt much upon the importance of preserving the independence of the judges, and contended, that they must be under the influence of the Crown, if, in addition to the judicial offices which they permanently held, they might be raised to another of great power and profit, to be held during pleasure — there being no more effectual mode of working upon their hopes and fears. He likewise complained of the obstruction to public business which must necessarily arise from such unseemly pluralities, and contended, that the practice might (though no doubt without reason) give rise to particular suspicion in the present instance, as the salary of Chief Justice of the Common Pleas, while the office was held by Lord Loughborough, had been increased 1000*l.* a-year by his Majesty.† He said he had intended to move, that a committee be appointed "to inquire into the independency of the Judges, and into the best means of securing it," but he was

* 23 Parl. Hist. 747.

† At this time the Judges' salaries were payable out of the Civil List, and might be increased without an application to the legislature.

aware, that a naked vote of that kind might be deemed unparliamentary and objectionable, and he should only move a resolution, "That putting the seals in commission *durante bene placito* and appointing judges Commissioners, with large salaries and perquisites to be received by them during the existence of a commission, originating in and solely dependent on the will and pleasure of the Crown, tends to invalidate the Act 13 William 3., for securing the independency of the Judges." He was backed up by several court-seeking peers in the guise of patriots — one of them denouncing the commission as "a job, for time-serving purposes and factious ends, subversive of the system which his Majesty, at the commencement of his reign, in the true spirit of a patriot king, had been so graciously anxious to establish, and only calculated to bolster up that infamous and ruinous coalition of parties by which this country had lately been murdered, cursed, and damned." *Lord Loughborough.* — "I never offered myself to the attention of the House under circumstances that required so large a share of your Lordships' favour and indulgence. I am indeed in a situation of great difficulty. Although personality has been studiously disclaimed, I am sure all your Lordships feel that the question is purely and entirely personal, and that your Lordships would certainly have been spared the pain of this discussion if my name had not been found in the commission recently issued for the custody of the Great Seal. Under these circumstances, it is not easy to say anything with propriety, and my wish must be to remain silent. On the other hand, silence might be construed into an acquiescence in the imputation of noble lords, so suddenly and miraculously inspired with a passion to correct abuses and to limit the power of the Crown." He then made a long and dexterous statement, showing, that the salary of the Chief Justice of the Court of Common Pleas had been permanently raised in a lawful manner, on account of its former inadequacy; that the custom of putting the Great Seal into commission, and making the judges Lords Commissioners, had subsisted since the Revolution, as well as before, without the slightest

His defence of himself.

objection from any the most furious reformer; that exigencies had from time to time occurred, and would continue to occur, when this course must be adopted for the good of the public service; that the hopes and fears of judges could not be excited by such appointments, which were rare, and known to be only temporary; that the "good old Whig," Sir Joseph Jekyll, and other judges celebrated for their integrity and high spirit, had acted as Lords Commissioners of the Great Seal, without complaint or suspicion; that the present state of business both in the Court of Chancery and in the Courts of Common Law proved that no injury had been sustained by the suitors; and that the character of the judges was as much venerated as ever in this country, notwithstanding the attempts to assail it by some noble lords, the instruments of others who knew better, and did not dare openly to support what they instigated. Still the Government was afraid to meet the motion with a direct negative. The previous question was put and carried without a division.*

When this Government was formed, Wedderburn and Charles Fox looked rather shily at each other; but it would appear by the following letter from the Secretary of State to the First Commissioner of the Great Seal, that a strict intimacy soon subsisted between them, as if they had always taken the same views in politics: —

"You will have heard before this, that the Empress has put in effect her resolution with respect to Cuban and Crim Tartary, without any resistance whatever. The French are extremely chagrined at it; but whether their dissatisfaction will have any consequences or not remains to be seen. I rather think not. I confess I think the event a very important one; and if it has the effect of introducing a new naval power into the Mediterranean, a very good one for this country.

"I believe I may now venture to say that the definitive Treaty will certainly come signed in the course of a week or ten days at farthest.

* 23 Parl. Hist. 974.

"I believe I have told you all that you can have any curiosity about in this part of the world, except that there is a report of Lord Ashburton being dead, which is so likely that I am inclined to believe it.

"I am very sincerely, my dear Lord,
"Yours ever,
"C. J. Fox.

"Wimbledon, 24th August, 1783."

Although not admitted into the Cabinet, he seems to have been on the most familiar terms of intimacy with all the members of it. The following is a very confidential communication to him from the Duke of Portland, respecting the adjustment of a quarrel with the King: —

"My dear Lord,

June 18. 1783.

"The reception I met with in the closet was so gracious that I know not how to describe it; and I am almost ashamed to mention the very full apology that was made for the harsh terms which had been used in the letters I took the liberty of showing you."*

Dec. 9. 1783. Reception of Mr. Fox's India Bill in the House of Lords.

At last the resolution was taken to put a violent end to the Coalition Government. The very hour when Mr. Fox presented his India Bill at the Bar of the House of Peers, Lord Temple, who had proclaimed out of doors the King's disapprobation of it, and that all who supported it were the "King's enemies," protested against it as an *infamous* measure, and expressed a hope that it would speedily meet the fate it deserved from their Lordships, in spite of its having been carried with a high hand in another place. Thurlow now came forward to ride on the whirlwind and direct the storm. Yet Loughborough, unappalled, showed a gallant bearing; and in answer to the opposition to the first reading of the Bill, offered so unusually and irregularly, pointed out the necessity for it, and the benefits it was likely to confer. After describing the bankrupt state of the East India Company's affairs at home, he drew a melancholy picture of the countries under their rule. "What scenes of desolation and distress do we there behold! A prince has been driven

* Rossl. MSS.

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A. D. 1783.

from his palace, his treasures have been seized, and he is now a fugitive through the plains of Indostan. Fertile provinces have been laid waste, wars have been unnecessarily waged, and a treaty concluded with the Mahrattas has, in fact, only led us to a new war."

The course adopted by Thurlow and the "King's friends" was, after this ebullition, quietly to allow the Bill to be read a second time, to hear counsel and evidence against it at the bar, and after trying to bring it into public odium, to throw it out on the motion that it be "committed." The speeches of counsel and examinations seeming to be going to an interminable length, Lord Loughborough made several vain attempts to check them, but found the sense of the House to be against him. He ventured to divide against a very unreasonable application for an adjournment, to enable the petitioners to discover more witnesses, — but he was beaten by a majority of 8. He thenceforth entirely lost heart, and in the final and memorable debate on going into committee, he took no part. His fears were realised, the Bill being rejected by a majority of 95 to 76, — and he had before his eyes the certainty of resigning the custody of the Great Seal, that it might be delivered back to Thurlow, with whom he was now on terms of the bitterest enmity.*

Lord Loughborough removed from being Commissioner of the Great Seal. Dec. 23. 1783.

Although Mr. Fox and Lord North were instantly dismissed, with circumstances to mark the Royal indignation, the Lords Commissioners were allowed to retain the Great Seal for a week, that they might give judgment in several cases that had been argued before them; but at the end of that time they were summoned to St. James's, and surrendered it into the hands of the King, who could not conceal his exultation in receiving this trophy of his victory, although he affected to thank them for the diligent discharge of their duty while they had sat in the Court of Chancery.†

The struggle, however, was not yet quite over. Although the King could do what he liked in the House of Lords, there remained a very large majority of Coalitionists against

* 24 Parl. Hist. 124—196.

† Crown Off. Min. Book, f. 31.

him in the House of Commons, and there efforts were making to crush the new Administration which he had formed. If these should succeed, Lord Loughborough's ambition must have been fully gratified, for his Majesty's likings and antipathies would no longer have been consulted, and to the expedient of putting the Great Seal into commission the victorious Coalitionists would not again have submitted. So violent had the Ex-First Commissioner become, that he was prepared to deny the power of the Crown to dissolve or prorogue Parliament, — having gloomy forebodings as to the issue of the contest. "It is a matter of no slight doubt," he wrote in a letter to a member of the House of Commons, "whether a dissolution or prorogation (the public bills depending) be a legal exercise of prerogative. In a pamphlet of the reign of Charles II., ascribed both to Sir William Jones and to Somers, this question is very ably argued, and many authorities are cited to prove the act to be illegal in the advisers. This topic should be a little canvassed. My fears are not very strong as to a dissolution; but I do not feel the same confidence that you and most people do upon the result of the first week. I expect to find more coldness and backwardness in the bulk of your friends to adopt any strong measure — much inclination in many to accommodate — and a general disposition to allow the Ministers to produce their plans. During the interval which these humours will afford, offers will be privately and openly made, which will divide men's opinions, and draw them off from the resolutions with which they set out."

Feb. 4. 1784. Resolution moved in the House of Lords against the factious proceedings of the Commons.

The Lords continued for some time quietly to look on; but addresses being carried by the Commons for the dismissal of Mr. Pitt, followed by an order forbidding the Lords of the Treasury to make certain payments, it was thought fit to commence active operations in the Upper House, and the Earl of Effingham there moved a resolution, "That it is not competent to either House of Parliament to suspend the execution of the law." This was warmly opposed by Lord Loughborough, who contended that the Commons had not exceeded their constitutional powers. "The Commons," said

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A.D. 1784. Lord Loughborough's speech against it.

he, "have formerly been told that they had nothing to do with the intricate and weighty affairs of state, and that their duty was only to grant money, or to deliberate upon what was set before them. But, thank God, the times are altered. Since the glorious Revolution till now, liberty of free debate and a power of animadverting on the conduct of Ministers have not been denied to either House of Parliament. It is a wise maxim in our Constitution, that the King can do no wrong; but it is a presumption of law, that the King may be deceived; and, according to experience, princes are more likely to be imposed upon than other men. Upon this principle, where the Sovereign has been deceived in his selection of the most proper and able Ministers, the House of Commons, long before the Revolution, was in the habit of addressing him for their removal. I doubt not the abilities of many of the present Administration — for some of whom I have the greatest esteem — but I think they are very ill-advised in not resigning after such large majorities against them, and still more in pressing a resolution like the present, which has such a strong tendency to produce a breach between the two Houses, and to create general confusion. I can tell you, your Lordships will suffer in the coming conflict. The Commons may continue to send up bills praying your concurrence, and the forms of the Constitution may be observed, but your real power will be extinguished. Your present effort is to establish an Executive Government independent of Parliament, and to set at nought the representatives of the people. Success would only insure your own degradation, and make you an appendage to Royalty." But the resolution was carried by a majority of 100 to 53, and was followed by an address to the King, acknowledging his Majesty's undoubted right to choose his own Ministers, and assuring him of the zealous support of the House in the exercise of his just prerogative.

None of the fatal predictions of ruin to the House of Lords were verified; for it was now in the situation, which at very rare intervals it has occupied, of being a rallying point for public opinion against the factious and tyrannical proceedings of the House of Commons. The nation had

been exceedingly shocked by the coalition between Mr. Fox and Lord North, and strongly condemned the votes of their representatives by which it was supported. The King, for the first time since his accession, was really popular; and many exclaimed, "Thank God, we have a House of Lords!"

However, Lord Loughborough stoutly encouraged the factious proceedings in the House of Commons, and wrote the following paper of instructions for the guidance of his friends there: "In stating our resolution, you cannot help observing that there can be no distinction between a discretionary power by common law and one given by act of parliament; and that a discretionary power given to Commissioners of the Treasury is given in truth to them as officers of executive government — ministers — not as trustees specially chosen. The necessary effect of the principle stated in our resolution is to deny the right of either House to interfere, by direction or advice, with any part of the Executive Government in the vast circle of discretionary powers that are now and must always be lodged with it for the public service, — which would leave you nothing but the right (always difficult in exercise) of punishing. Where there is no power to prevent abuse, there will not be much power to punish. — This leads to stating from your Journals a great train of instances of such interference, and marks the necessity for it. You will then come to conclusions more general and declaratory of the rights of Parliament, as well as to the particular ones; and perhaps it will be right to frame them with a view of being communicated to us. In short, I would have a strong though temperate manifesto, explaining and asserting the rights of Parliament against the doctrines laid down in the Chancellor's speech. In doing this, you expose the wickedness and danger of that system which would throw all government into the hands of Ministers, and sink Parliament to its ancient insignificance. The Chancellor said in so many words that the best times were those in which Parliament did not pretend to interfere with the Executive Government. He must mean the reigns of the Tudors, for there have been no such times since."

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Delusive hopes of the Coalitionists.

A few days after he wrote to a friend, affecting to think that the cause was prospering. "Every body is so active, that there is no occasion for any prompting. Lord N. has kept open house, and his dinners have been very lively. There is not a trace of any desertion. One or two whom there was some reason to doubt have very explicitly cleared themselves. I am persuaded that a dissolution is a resource in view; but if ever the Ministry consider the measure in detail, they will find it impracticable at such a period of the session. The report from St. James's is, that the hope of the Administration rests on an agreement with the India Company, and a bill, framed by consent, so reasonable that all moderate men must consent to it. At the same time I hear that Johnstone *, who knows all that transaction, says the Ministry cannot continue."

These anticipations were vain; but the pugnacious Chief Justice, during the remainder of the session, took every opportunity of assailing the new Government †, and he seems sincerely to have thought that it could not stand.

March 25. 1784.

At last came the dissolution, and the hopes of the Whigs were extinguished. Their Peers luckily could not be ejected, but the members who had swelled the majorities in the Lower House against the peace, and on the subsequent divisions, hardly ventured to show themselves on the hustings; and only a miserable remnant of them ever again saw St. Stephen's Chapel.

May 18. 1784.

From the meeting of the new Parliament till the King's insanity, a period of four years and a half, Lord Loughborough's prospects were very gloomy. Lord North may almost be considered as having retired from public life. Our Chief Justice thus laments the inactivity of his old political chief on Mr. Pitt's celebrated motion for parliamentary reform: — "Lord North is rather low-spirited, and does not like to be personally attacked, or to take a very active part in any measure. He was very improperly advised to be

* Afterwards Sir Wm. Pultney.

† See in particular his speech against Mr. Pitt's famous Commutation Tax, 24 Parl. Hist. 1376.

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absent yesterday on Mr. Pitt's motion, which he might have had the credit with all sober men of rejecting by a much greater majority than twenty."* By degrees the Tory section of the Coalition almost entirely disappeared, and Loughborough became a regular, zealous, and seemingly attached Foxite, having no scruples about parliamentary reform or any other Whig measure. Strange to say, Mr. Fox, Mr. Burke, and Mr. Sheridan seem to have admitted him to their confidence without the slightest suspicion or misgiving, as if he had always been a consistent politician and they had never differed with him. He was considered the leader of the Whig party in the House of Lords, and he had great influence respecting all their movements.

Lord Loughborough a Foxite.

I cannot affirm that his advice led them to take the discreditable course of opposing Mr. Pitt's measure for establishing free trade between England and Ireland; but when it came up to the House of Lords, the pupil of Adam Smith delivered a violent speech for "protection to native industry," contending that if there were an unrestricted intercourse between the two countries,—from the cheapness of labour in Ireland, English manufactures would be ruined.† He added,—"If there are at this moment any idle and silly conceits engendering in the minds of men, of opening a trade with France, and of taking her wines in return for our hardware, I have no doubt that the good sense and enlightened policy of the nation will overturn any such speculative chimera."‡

June 7. 1785. His opposition to free trade with Ireland.

Although Mr. Pitt's popularity increased in spite of the cry of "protection," Lord Loughborough tried to work himself into the vain belief that there was a *reaction* in favour of the Whigs. In a letter written by him from Harrowgate in the autumn of 1785 to a friend in Ireland, after describing the "weak and disgraced state of the Government in both countries," he observes,—"A very zealous partisan of Pitt has spent a week here, and his discourse is the most certain indication I have seen that the rage for Pitt is totally calmed.

* Letter to Mr. Eden, dated "Wednesday, 7th May."

† I fear he was now speaking against his better judgment, for he had learned better principles from David Hume and Adam Smith, and from the debates of the Select Society.

‡ 25 Parl. Hist. 864.

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Nothing but the shame of avowing their own folly prevents his late adherents from declaring openly against him. The amusement of our society has been a theatre in a barn, which we have most regularly attended."

Sept. 13. 1785.

The Duke of Portland, under the same delusion, thus addressed Lord Loughborough: — "I have received accounts from Scotland within these few days of the best possible disposition of the manufacturers in and about Glasgow and Paisley, who have of their own accord, and independently of any suggestion from our political friends, drawn up a sketch of an address, in which they state, in firm but discreet and well-managed terms, the incapacity and weakness of the present Ministers, and with the same prudence desire a general remedy, *the particular application of which cannot be misunderstood,* and I am assured that if it is suffered to go forward it will be most respectably and generally signed. I know no person to whose judgment I can so well apply for the information necessary to enable our northern friends to determine their conduct. I shall certainly write to Lord Sheffield, and Eden, and some of our principal friends who reside in the manufacturing counties; but, without compliment (which would be very inconsistent with the sincerity of my regard for you), there is no one who is possessed of such general knowledge of the subject as yourself." *

Bad prospect for Loughborough.

Lord Loughborough, however, was sadly disappointed in the anticipations of popular favour entertained by him and his Whig associates, and he soon became much dejected. The well-founded rumours circulated of violent disputes between the Prime Minister and the Chancellor afforded no consolation, for they could do no good to *him,* and his only chance of the Great Seal was upon the total rout of an Administration that now seemed more firmly established than any during the present reign.

However, he did not lose his courage. His great object was to cultivate the favour of the Heir Apparent, and the following note shows that he had made some progress in this line: —

* Rossl. MSS.

"MY DEAR LORD LOUGHBOROUGH,

"Since I had the pleasure of seeing Lady Erskine this evening I have been thinking that it might possibly be as convenient and agreeable to you, and perhaps more so to us both, were you to come and eat your mutton chop quietly, tête-à-tête with me about six o'clock to-morrow. I shall be happy to see you, and to have an hour's conversation with you over a bottle of port.

A.D. 1787. He is in favour with the Prince of Wales.

"I remain, my dear friend, ever most truly yours,

"GEORGE P.

"Carlton House, Sunday night, 12 o'clock,
April 29. 1787." *

March 6. 1787. He opposes the commercial treaty with France.

When M. de Vergenne's commercial treaty with France came on to be debated, — thinking this a favourable opportunity for exciting clamour about "native industry," he furiously opposed it, and divided the House against the address to the Crown approving of it, — although he was left in a minority of 24 against 74. †

Session, 1787. Q. Effect of making a Scotch representative peer a peer of the United Kingdom.

He gained a victory on a question not considered a party one, viz. "Whether Scotch representative peers being created British peers, they should continue to sit as part of the sixteen, or their place should be supplied by a new election." Upon a very able argument of his against the Chancellor, the House determined, by a majority of 52 to 38, "That the Earl of Abercorn, who had been chosen to be of the sixteen peers by the treaty of Union, to represent the peerage of Scotland in Parliament, being created Viscount Hamilton, by letters patent under the Great Seal of Great Britain, doth thereby cease to act as a representative of the peerage of Scotland." ‡

Yet, when Government put forth its force, all argument was unavailing, and after an admirable speech against a bill for allowing the most mischievous species of gaming that ever was invented — the insurance of lottery tickets — he was defeated by a majority of 38 to 7. §

Notions entertained respecting the office of Irish Chancel-

I am much amused, and so will my *legal* readers be, with a view which Lord Loughborough gives of the office of Chancellor in Ireland, and of the state of jurisprudence in that country. Mr. Eden, who had been called to the English

* Rosl. MSS. † 26 Parl. Hist. 585. 595. ‡ Ib. 603. § Ib. 619.

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lor, and the learning of the Irish bar.

A.D. 1787.

bar, but had soon left it for politics, having adhered to Mr. Pitt's Government, was now engaged in the diplomatic line, in which he afterwards reaped such high reputation; but his probable promotion here being very slow, the Chief Justice of the Common Pleas thus advised him to turn to better account his favour with the Minister:—"My project for you may seem very chimerical, but it is not half so unlikely as it once was that you should be fixed in the *corps diplomatique*. Why should you not return to your old corps and to Ireland? I have never heard of a successor for old Lifford*, who was in every respect fitted for the office, which requires much more than a technical knowledge of law. All that is wanting in that respect you would, with your application, acquire in a twelvemonth; *and in half that time I am sure you would possess as much as any man at the Irish bar.* Take over with you as Secretary some clever man bred in the Register's office here, and I would engage, your decrees should be more accurate and more expeditious than they have been for many years in Ireland. The country would have no objection to you, nor you to it,—and I am certain you would find that court in a little time a more pleasant station than any court of Europe."†

Lord Loughborough himself, in the absence of all party excitement, seems now to have taken to study more than at any period since he left Scotland. He gives this account of himself in the beginning of 1788:—"I have passed a month in the country entirely alone, but very much employed. You cannot imagine how valuable a present you made me in the 'Assizes of Jerusalem,' which I have studied as diligently as ever I did Littleton. The result of it will make its appearance in print in the course of this year—not by my means however, but through a much better channel. Gibbon had long been in pursuit of the book for a part of his History, and as the language of it was less obscure to me than to him, I have employed myself in furnishing him with an abstract of

* For an account of this Chancellor, see *antè*, Vol. V. Ch. CXLIV.
† 12th Sept. 1787. Auckland MSS.

it.* My own researches are now swelled to a very considerable bulk, but they have very little chance of ever making their appearance abroad, as I never can satisfy myself with any form in which they arrange themselves upon paper." †

Party politics were now in a most languid state, and it seemed as if the rest of the King's reign were to slip away in drowsy repose: yet the following year was one of the most stirring in our annals.

Impeachment of Mr. Hastings.

It was ushered in by the impeachment of Mr. Hastings. Throughout the whole course of this protracted trial Loughborough and Thurlow were pitted against each other, the former zealously taking part with the prosecutors, and the latter with the accused. The Lords first had to determine a question upon which the result mainly depended,—"Whether each charge was to be conducted and determined separately, or the managers were to finish their case on all the articles of impeachment before Mr. Hastings was to be called upon to enter upon his defence?"

Lord Loughborough contended that the charges should be taken *seriatim*, urging, that from their multifariousness and entirely distinct and separate character, justice could not otherwise be done between the parties. Thurlow, of course, took the other side, and succeeded by a majority of 88 to 33 ‡, — which was considered tantamount to a verdict of acquittal,— although this was not formally pronounced till many years after, when Loughborough had become Chancellor, and Thurlow was reduced to the rank of the junior peer.

During this session, in opposing the East India Declaratory Bill introduced by Mr. Pitt, the new Foxite took occasion to deliver a laboured panegyric upon his present Chief. Among other things, he said, "The bill of my right honourable friend, like his own mind, was manly and open. He was above the meanness of concealment, and scorned the scandalous baseness of a lie. My right honourable friend asserted, and asserted openly, that patronage and power were

* The book is written in Norman French, the original dialect of English law.

† 12th Jan. 1788. Auckland MSS.

‡ 27 Parl. Hist. 56. 63.

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inseparable; and as the best possible guard against abuse, he placed the patronage of India in the hands of honourable men, with complete responsibility. What did the other bill do? Expression fails me. I can find no adequate term to describe its operation — short of the Old Bailey. It stole the patronage, and put it in the pocket of the Minister. Delusion is now over, and misrepresentation and falsehood stand refuted and detected. My right honourable friend has reason to be proud of his present position. Out of place, he possesses patronage, and patronage of the noblest kind — the protection of defenceless millions, — a species of patronage more congenial to his mind than the giving away of satrapies. The unremitting exercise of this patronage is the best answer to the calumny and slander which, in the hour of popular phrenzy, industrious clamour had cast upon his name. My right honourable friend will go to the next general election confident of success, appealing to the two India bills, — his of 1783, as commented upon by its enemies, and his rival's of 1784, as now explained by its friends." — However, he could only muster 28 peers to divide against the Government. In reality, the nation had as yet in no degree forgiven the "Coalition," and placed increasing confidence in Mr. Pitt, which would have been proved if a dissolution of Parliament had then taken place.

A.D. 1788.

The King's illness. Nov. 1788.

But when there was no murmur of party strife, and Mr. Fox himself, abandoning objects of ambition, solaced himself in the soft climate and classic scenes of Italy, the monarchical power in the Constitution was suddenly in abeyance, and the two Houses of Parliament were called upon to supply the deficiency.

CHAPTER CLXX.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH DURING THE DISCUSSIONS RESPECTING THE REGENCY.

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A.D. 1788.

Measures proposed by Lord Loughborough for restoring the exercise of the Executive authority.

I AM enabled to let in a flood of new light upon this interesting portion of our history. It has always been notorious that Lord Loughborough was the chief adviser of the Prince of Wales and of the Whigs when the royal authority was suspended; but little has hitherto been known of the measures which he urged. Had they been adopted, they probably would have led to civil war, and it is impossible to defend him from the charge of rashness and recklessness in proposing them. I adhere to the doctrine, that when the two Houses of Parliament, on due inquiry, have found and resolved that the Sovereign is disabled, by mental infirmity, from exercising the functions of Royalty, the next heir to the throne is entitled, during the continuance of this disability, to carry on the Executive Government as Regent, with the same authority as if the disabled Sovereign were naturally dead; — instead of admitting that upon such an emergency power is vested in the two Houses of Parliament to elect as Regent whomsoever they please — to confer upon him, or withhold from him, any of the prerogatives of the Crown, — and to transfer to another, at their pleasure, any portion of the royal patronage. The view of the question which is consonant to our monarchical constitution would probably have met with general acceptation, but for the circumstance that it suited the interests of an unpopular party, and would have been fatal to an Administration which deservedly stood high in public favour. We shall find that Lord Loughborough, although he did not openly recommend a course different from this, and although he stoutly denied that he had ever done so,— in reality pressed the Prince of Wales to supersede the constitutional jurisdiction

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of Parliament, and, by his own authority, to place himself upon the throne during his father's lifetime.

A.D. 1788.

His Majesty's indisposition, although it had been coming on for some months, was long anxiously concealed from the public; but in the end of October and beginning of November it was so much aggravated, that rumours of it were spread abroad. Lord Loughborough had heard nothing beyond these, when he received the following note:—

He is called in to advise the Prince of Wales.

"The Duke of York presents his compliments to Lord Loughborough, and having a commission of the utmost consequence from the Prince of Wales to communicate, desires he will do him the favour to come to Carlton House as soon as he conveniently can.

"Carlton House, 4 o'clock, Thursday, 6th Nov." *

Immediately obeying this summons, all the details of the royal malady were disclosed to him, and he was told that to him, in the absence of Mr. Fox, the Prince must look for counsel; that a confidential communication would be made to him daily, upon the state of the King's health; and that he must, as a great constitutional lawyer, consider what steps ought to be taken in such an unprecedented emergency.

Intrigues of Mr. J. W. Payne, the Prince's secretary.

The person who acted the most important part at this time is as yet not much known to fame,—Mr. J. W. Payne, the Prince's private secretary. This obscure, good-natured, but not very profound or trust-worthy individual, had much influence over the mind of his royal Master, and was actuated by a keen love of intrigue. Accordingly he opened separate negotiations with the two rivals and enemies,—Lord Loughborough and Lord Thurlow,—holding out to each the certain prospect of favour under the new *régime*, which might be expected speedily to commence. He was stationed at Windsor, where the Prince had established himself to watch over his father's illness.

The following are letters which he wrote to Lord Loughborough:—

"7th Nov.

Letters from Mr. Payne to

"MY DEAR LORD,

"In situations of difficulty and moment, one generally looks to

* Rossl. MSS.

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Lord Loughborough respecting the King's illness.

those friends, who from presuming are most willing, we know also are most able to administer advice. On this presumption, I shall make no further apology for troubling you.

"I am sorry to tell you, His Majesty is now in a very alarming situation, *so bad*, that I fear his dissolution is almost the best that can be hoped. He has at present, with a more considerable degree of wandering, a most violent heat, accompanied at the same time with a great chilness: every moment we fear something dreadful.

"Knowing the friendship and opinion the *best of friends* entertains for you coincides so much with my own, I venture to say to you at a time when he sees nobody, that if anything that can suggest itself that can be of use, I shall be happy to be made a vehicle of to his advantage. He has this morning talked to me of rejecting any rule, where somebody was not united to him. I told him, I was persuaded he would be advised to the contrary by his best friends, on the truest principles of public good, if any unfortunate accident should happen. I speak my mind freely to him without much prejudgment, and therefore I only mention this to you as it passed.

"I need not say to you, I beg I may not be understood to have had any communication with you on this subject, as I have no authority for so doing, and therefore you need not acknowledge any such. Seeing the Prince as much as I do, I am anxious to have the best opinions, and those I know to be most friendly to him, during his great agitation of spirits, in which he displays the most filial and affectionate duty and regard to a very unhappy family.

"I have been up two nights, and a most violent headache will not add to the coherency of saying any more, than that I am,

"Most sincerely and obediently,

"Your Lordship's faithful serv[t].

"J. W. Payne.

"Friday, 8 o'clock at night.

"If you should have any thing to say, direct to me at the Prince's at Windsor; but I hope to be in town the day after to-morrow for a few hours."

"Nov. 9th and 10th, 12 o'clock at night.

"My dear Lord,

"I received your first letter this morning in bed, and as the Prince was then asleep, I waited till he was up to communicate the contents of it. I shall best give you his reception of it in his

own words: — 'Tell Lord Loughborough I am persuaded no less of his attachment than I desire him to be of mine, and shall always receive his advice with the same *great* degree of pleasure I do upon this occasion, and without which I shall not act for any material decision of my present delicate situation.' I can add on my own part, that he expressed the highest respect for all the sentiments contained in it, and which I am convinced will not be lost upon him. As I wrote fully to Sheridan on the subject of His Majesty's situation, I was on the point of addressing myself to you on the subject of your last letter, which I had just received, when I was called away; so I despatched the messenger with what was finished, that you might have the communication contained in it before you went to bed; since when, matters have gone worse, and continue to increase with the night; but as I do not mean to send this letter till I am up, I will give you the particulars at that time. The Prince has been just applied to, to lay his commands upon all the officers and servants to obey implicitly the directions of the physicians, with respect to the force that might be necessary to use in the course of the night, as their patient was growing much more peremptory; and from what I can understand from the *best* authority, the *last* stroke to this unhappy affair cannot be far off. It is what every person in a situation to see, is obliged to wish, as the happiest *possible* termination to the present melancholy scene.

"I took the liberty of mentioning to the Prince the very liberal accommodation of your conduct in promotion of his service. He said, 'Well, if the C. chooses to remain where he is, Lord L. can have the Privy Seal or President for the present, and settle the other arrangement afterwards, if it is more to his mind.' I tell you this only in strict confidence, as I have no authority to say it; but the regard I know *he* bears you assures me *he* would think all precaution of secrecy unnecessary with you. I have not yet read to *him* the contents of the transcript enclosed in your last, nor the declaration that accompanied it, as he is now very much fatigued; but it shall be the first thing I do in the morning. I have, however, informed him of the receipt of it, and he desires me to thank you for it.

"I need not suggest to your Lordship's better judgment how material it is that there should be no appearance of the *smallest intercourse* between *this place* and town, as it might serve to inflame *some certain people*, who, I have reason to think, are not quite convinced that *a reform* might take place; and all active

communication where you are may be well enough accounted for, and expected, without a certain person (who sees nobody) be supposed to be informed, or at least be engaged in it. The person I allude to said to me to-night, 'I hope Lord L. and S. are in close communication together on this occasion,' and I assured him I knew that you were both privy to everything each other did: at which he was much pleased.

"I trust to your Lordship's friendship to myself, no less than your known zeal for H. R. H., for a free communication of your advice on the present occasion, as I cannot flatter myself I can be of any essential service to the *person* I am most obliged to, more than in being the medium of conveying more worthy opinions than my own, and I trust I need not add, that nothing you can say shall not be as sacred as in the repository of your own bosom."

"Half-past ten, Monday morning.

"The King's fever is hardly anything to-day; his pulse is not much above 70. The *other* distemper fixed, and no appearance of the smallest abatement with the amendment of his health. I think something must soon be thought of; for I think all secrecy with regard to His Majesty's situation any longer almost unadvisable. Pray give me your opinion.

"Ever, my dear Lord, yours, &c.,

"J. W. P."

"10th Nov., Monday night.

"MY DEAR LORD,

"I have just now received the favour of yours, and am sorry I can give no better accounts on the subject of it; the King continuing in the same situation. I am happy to find your Lordship's opinion so strongly corroborate my own. An Act of Regency must necessarily precede the occasion for the exercise of it, as the third state would be wanting to give force to it. No law can be passed before that chasm is filled up, and the succession must be to the uninfringed right of the past inheritor, only subject to a *possible* resumption in case of competency. Some form may perhaps be necessary in requesting the next heir to assume the reins of government, but the first occasion of publick business must be the time, and that cannot be long postponed. The Prince's task seems to me to be an easy one. He is far from anxious to interfere of his own will, and nothing can possibly proceed without application to him. King William, in a weaker degree, seems

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to my recollection to be a case in point, if at least I am correct in the remembrance of it. Was he not desired to take charge of the government, and when the legislation of the country was thus completed in its three branches, that it proceeded to ratify it by law? I have nobody within reach to borrow the least light from, that I dare speak to on the subject, but am happy to find the discussion of it in such good hands. I shall direct the messengers to call on you, and you may rest assured that your letters can by no accident come under the perusal of any other individual than the one you allude to. Before any decided measure is decided on, it is necessary, I think, you should see the Prince, and he says as soon as he has seen S. he will contrive it; but he is extremely jealous of seeing more than one person at a time, and that not by way of *consultation*, but in private friendship. He said to me to-night, he thought it had better be done by your coming to your farm, and thence to Bagshot; but more of this hereafter, of which I will give you the earliest intimation. Take no notice, however, of this communication for the present."

"Tuesday morning.

"His Majesty continues just the same; he has eaten a hearty breakfast, and has no fever; but a *total* deprivation continues.

"I am ever, my dear Lord,

"Most faithfully yours,

"J. W. PAYNE."*

The next communication which Lord Loughborough received was from Mr. Sheridan: —

Letter from Mr. Sheridan to Lord Loughborough.

"MY DEAR LORD,

"Every thing remained late last night at Windsor without the least amendment, and in consequence of a consultation of the physicians, they are, I believe, ready to give a decided opinion.

"The Prince sends Payne to town this morning. I shall make an attempt at setting his head a little to rights, if possible, for he is growing worse and worse, but a few words from your Lordship will have more weight. Among other things, he tells me he has suggested to the Prince to write directly to the Chancellor, and he tells me that the letter shall be so worded that either he or I may deliver it, so that I suppose his notion is to bring this negotiation into the same train and footing as Lord Sandwich's. It is really intoler-

* Rossl. MSS.

able, and I mean to speak very plainly to him. I will endeavour to have the honour of seeing your Lordship this morning; if not, at Lord North's in the evening.

"I have the honour to be, with great truth and respect,

"Your Lordship's most sincere and obedient,

"R. B. SHERIDAN.

"Wednesday morning." *

The following is Lord Loughborough's answer to Mr. Payne — to be shown to the Prince of Wales: —

"MY DEAR SIR,

Lord Loughborough's plan for the Prince to seize the government.

"I can with truth assure you that my attention has never deviated to any other affair than the subject of our conversation, from the moment I received last Thursday an order to turn my thoughts to it. I should feel an equal pride and happiness, if it were in my power to contribute in the smallest degree by any possible exertion of zeal to the ease and tranquillity of H. R. H. in so trying a situation as Providence has prepared for him. I consider that there are but three possible events in immediate expectation: — an ambiguous state of the King's disorder; an evidently decided state; or a sudden termination, which can be looked for only in one way; for an entire and speedy recovery seems to be beyond the reach of any reasonable hope. In the two first cases, it is the result of my most deliberate judgment that the administration of government is as directly cast upon the heir apparent, as the right to the crown is, in the last case. All are alike the act of God, and the law of England knows no interval in which there can be an interregnum; — but holding, as I do, the principle of right to be as distinct and plain in the extraordinary, as it unquestionably is in the ordinary case of a demise, it must be allowed that there would be some material difference in effect. No precedent can be found except one little known, and in times where both the frame of the government and the manners of the age were so little similar to what they now are, that it would be of no authority. In a case, therefore, supposed to be new, men would be for a moment uncertain by what rule they were to be guided, and upon a supposition of an ambiguous state of the disorder, great industry would be used to prolong the state of suspense. Every appearance of favourable intervals would be magnified, and

* Rossl. MS.

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the apprehension of a change would be studiously excited to prevent the public opinion from attaching itself to the apparent acting power. To oppose this, great spirit and steadiness would be necessary; but I have no doubt that the only measure would be, to assert that authority which no other person has a right to assume, and which, with an united royal family, no opposition would be able to thwart. Wherever any precedent occurs in which a declaration of the King's pleasure is necessary, that declaration must be made by the only person who can be legally presumed to be authorised to make it. The case of an evidently decided disorder is attended with very little embarrassment. There would be no expectation of change to encourage and rear up an opposition to the full acknowledgment of the right to the administration of government. It would be declared to the nation by Parliament without restriction, for any partition of authority I hold to be totally inconsistent with the frame of our government, which has provided a sufficient control in the Parliament, and admits of no intermediate and secondary control. I doubt not but some wishes might be entertained for the purposes of private ambition to create councils and devise restrictions, but they would terminate, as they ought, in the confusion of those who had the presumption to propose them.

"The third case is not new. There are known forms to be observed, which should be carefully inspected and prepared. The most essential is, a declaration to be made and entered at the first meeting of council; the substance of which should be well considered and digested, because it would be taken as an indication of the spirit of the future Government. It should be short, general, and at the same time satisfactory to the public on the great lines of policy. I have not the least apprehension of any mischief, or even inconvenience, that can arise to H. R. H., but from his own virtues. It may sound harsh, and you will with some reason impute it to the coldness of age, when I say that the duties of public life in the highest state of human greatness may often require — not dissimulation, for I hold that unworthy maxim for government to be equally false and foolish, but a certain reserve and guard upon the frankness of that amiable disposition which is the ornament and delight of society. I should be completely the old man if I should permit myself to run on further. You will excuse, and I am sure not expose a too forward zeal, from my *dear* Payne. Yours ever,

"LOUGHBOROUGH."*

* Copied from draught of the letter in the Rossl. MSS.

The meditated *coup d'état* is more clearly developed in the following paper, which is written in pencil by the hand of Lord Loughborough, and which I have been informed he himself read to the Prince at a secret interview which they had together at Windsor.

Pencil memorandum, containing Lord Loughborough's explanation of the *coup d'état* which he recommended.

"Upon the supposition of a state of disorder without prospect of recovery or of a speedy extinction, the principle of the P.'s conduct is perfectly clear. The administration of government devolves to him of right. He is bound by every duty to assume it, and his character would be lessened in the public estimation if he took it on any other ground but right, or on any sort of compromise. The authority of Parliament, as the great council of the nation, would be interposed, not to confer, but to declare the right. The mode of proceeding which occurs to my mind is, that in a very short time H. R. H. should signify his intention to act by directing a meeting of the Privy Council, where he should declare his intention to take upon himself the care of the State, and should at the same time signify his desire to have the advice of Parliament, and order it by a proclamation to meet early for despatch of business. That done, he should direct the several Ministers to attend him with the public business of their offices.

"It is of vast importance in the outset, that he should appear to act entirely of himself, and in the conferences he must necessarily have, not to consult, but to listen and direct.

"Though the measure of assembling the Council should not be consulted upon, but decided in his own breast, it ought to be communicated to a few persons who may be trusted, a short time before it takes place; and it will deserve consideration whether it might not be expedient very speedily after this measure, in order to mark distinctly the assumption of government, to direct such persons—at least in one or two instances—to be added to what is called the Cabinet, as he thinks proper. By marking a determination to act of himself, and by cautiously avoiding to raise strong fear or strong hope, but keeping men's minds in expectation of what may arise out of his reserve, and in a persuasion of his general candour, he will find all men equally observant of him."

Proposal to constitute the Prince of Wales Re-

It would further appear from another paper, which is likewise in Lord Loughborough's handwriting, that he had at one time contemplated a scheme of supplying the royal au-

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gent by a sham commission under the Great Seal. A.D. 1788.

thority by a "phantom," somewhat like Thurlow's, which he afterwards joined in ridiculing so severely. According to the constitution of this country, the Sovereign may assign any part or the whole of the royal authority to be executed by a deputy or deputies*; and the suggestion was, that a commission should pass the Great Seal in the King's name, although without his consciousness, appointing the Prince of Wales Regent: — "On the supposition of a certain though slow recovery, would it not be the natural course to commit to the Prince, in the name and by the authority of the King, the power of administration, with no other restriction than such as honest advice can suggest, and honourable engagements can secure? Could that fail to be the mode adopted, were the royal family united as it ought to be? And to accomplish both these ends, is it impossible to establish a confidence between those who fairly mean the public good? On the contrary supposition, that a recovery is not certain, the conclusion would not much vary. In my mind, it would not vary in any respect."

But we are left totally in the dark as to the ingenious contrivance by which Thurlow was to be induced to put the Great Seal to such a commission. The office of Chancellor might have purchased his consent; but this was to be held by the contriver himself.

The following is the "declaration" which was sent by Lord Loughborough to Windsor, and which is alluded to in one of Mr. Payne's letters. I am at a loss to understand whether it was to be read by the Prince in Council as Regent after he had seized the government, or whether it was written in contemplation of the immediate death of George III., which had several times been supposed inevitable, — and so was to be the speech of George IV. reigning in his own right: —

Declaration to be

"I feel, more than any other person can, the unspeakable misfortune that the nation and I have sustained by the melancholy

* Of this we have still instances in giving the royal assent to Bills, and in opening and proroguing Parliament.

occasion upon which you are assembled. The weight of the important duty I am called upon to discharge, by undertaking the government of this great empire, can only be alleviated by the consciousness of the entire affection I bear to my native country, and of the most ardent zeal for promoting its domestic welfare and its just consideration amongst the other states of Europe. Animated by such sentiments, I shall not doubt the assistance of every honest man in my unceasing endeavours to maintain and strengthen the religion, laws, and liberties of my kingdom. The constitution in church and state which my family was called to defend, shall ever form the rule of my government, and it shall be my constant study to improve the blessings of peace with the protection of the Divine Providence upon my dominions, in the support of public credit and the encouragement of agriculture, manufactures, and commerce."

read by the Prince of Wales in council on assuming the government.

But on the return of Mr. Fox from Italy all these vagaries were swept away. He was confidentially shown Lord Loughborough's suggestions, but earnestly requested not even to let the noble schemer know that he had seen them.

Mr. Fox returns from Italy and opens a correspondence with Lord Loughborough.

Accordingly, as if things had been quite entire, he opened a negotiation with the Chief Justice by the following note:—

"My Lord,

"I should be happy, if it is not troublesome, to have half an hour's conversation with your Lordship upon the subject of the measures to be taken by the Houses of Parliament, in case a notification to them should take place, which, according to public rumour, the state of his Majesty's health renders but too likely. It may be proper for me to state previously (though probably your Lordship knows too much of what is passing to make such information necessary), that I wish to speak merely for myself and a few friends, and have no authority from, nor indeed any communication with, any person of higher station. The very circumstance of my applying to your Lordship will also satisfy you that I mean to treat this business as wholly unconnected with general politics, about which I am afraid our sentiments still continue to be widely different. All I wish is a conference, as a member of Parliament with another member, upon a subject of very great importance, upon part of which at least our opinions are likely to be similar. I am sure I need not add, that any desire of finding out such of

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your Lordship's intentions as you may wish to be secret is what I am wholly incapable of. I will call in a few minutes for your answer, in case it should be convenient for you to see me now. If not, I will trouble you to let me know at what time I shall wait upon you—unless you had rather decline the conference altogether—in which case, as I have certainly no right to claim it from you, I beg you will tell me so without ceremony.

"I am, with great regard,
"My Lord,
"Your Lordship's obedient servant,
C. J. Fox.

"Thursday.

"I am at Thomas's Hotel, Berkeley Square." *

Understanding between Mr. Fox and Lord Loughborough.

They met; and the notion of superseding the authority of Parliament being declared inadmissible, it was speedily agreed that the constitutional course should be pursued of calling upon the two Houses to declare the King's incapacity, and to address the heir apparent, praying that he would take upon himself the exercise of the royal authority as Regent. No opposition by Mr. Pitt to this mode of proceeding was anticipated; and as the King's recovery was then considered impossible, the speedy advent of Whig rule seemed inevitable. In those days it was thought that the personage filling the throne, with the undiminished power and patronage constitutionally belonging to his high office, might easily give an ascendency to any party in the state, and choose his Ministers at pleasure. Mr. Fox, regarding himself minister elect, without giving any positive pledge upon the subject, pretty clearly intimated to Lord Loughborough that the Great Seal should be his. It seemed now to this often-disappointed aspirant as if nothing could come "between the cup and the lip;"—he began to calculate how many days would elapse before he must be hailed as Lord Chancellor; he feasted his fancy with an anticipation of Thurlow scowling as he laid down the bauble, and the congratulations which would be showered down upon himself as he carried it away from the Prince's closet; he thought with delight of placing it on the bar of the House

* Rossl. MSS.

of Lords, when he supposed himself to be going thither from the woolsack to receive the messengers of the House of Commons.

Mr. Fox informed of the intrigue between Lord Thurlow and the Prince's party.

It is a curious fact that Mr. Fox had hitherto been kept entirely ignorant of the intrigue that had been going on between Thurlow and Carlton House. This had been begun by Payne; — and Sheridan, whether from an old grudge against Wedderburn, or from what other motive, I know not, had warmly entered into it, — so that the Prince had positively engaged that the present Chancellor should be continued under him as Regent, on condition of his supporting the plan of conferring the Regency without any restriction. When the matter was at last mentioned to Fox, the whole truth was not disclosed to him: he was not informed of personal interviews which had taken place between the Prince and the Chancellor at Windsor, and the arrangement was represented to him as generally wished by the party. Having absolutely made up his mind to agree to it, he wrote to Sheridan: — "I have swallowed the pill — a most bitter one it was, — and I have written to Loughborough, whose answer, of course, must be *consent*." The following announcement by him to the disappointed party must have been received with amazement and consternation: —

Mr. Fox's letter to Lord Loughborough, stating that the Great Seal had been promised to Lord Thurlow.

"My dear Lord,

"I am so perfectly ashamed of the letter I am writing that I scarcely know how to begin — but my knowledge of your way of thinking, and the perfect and unreserved freedom with which we have always conversed together, gives me some courage, and induces me, without any further preface, to state to you the difficulties under which I feel myself.

"When I first came over, I found a very general anxiety among all our friends, and in the Prince still more than others, to have the Chancellor make a part of our new Administration, and (excepting only the D. of Portland) they all seemed to carry their wishes so far as to think his friendship worth buying, even at the expense of the Great Seal. This idea seemed so strange to me, considering the obligations we are all under to you, and so unpleasant to those feelings of personal friendship which I am sure you do not consider as mere professions from me to you, that I

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took all sorts of means to discourage it, and have actually prevented the Prince, though with some difficulty, from saying any thing to Thurlow which might commit him, and to prevent the possibility of it, I obtained from him the message which I delivered to you, Wednesday night, from his Royal Highness. The difficulties which have arisen within these few days, and which to many seem increasing, have had the effect of increasing the anxiety of our friends for Thurlow's support; and they seem all to be persuaded that the Great Seal would gain him, and nothing else. You know enough of the nature of our party to know how rapidly notions are sometimes propagated among them, and how very difficult it often is for us, who ought to lead, not to be led by them. Under these circumstances, I must own (and I am certain you will approve my freedom in owning it, whatever you may think of my weakness) that I wish to have it in my power to offer Lord Thurlow the Great Seal, not from my own opinion of the advantages like to accrue from such an offer, but from the dread I have, if things turn out in any respect ill, of having the miscarriage imputed to my obstinacy. The invidious point of view in which you would stand yourself in such an event, rather adds to my anxiety; for although they all know the handsome offers you have made, and therefore that the whole blame ought justly to lie on me alone who refused them, yet it is not pleasant to be looked upon as a person whose pretensions, however just, have stood in the way of the success of a party. I have related to you most freely the difficulties of my situation, and I should really take it ill if you answered me but with the most unreserved freedom. If you can call here it would be best; but if you cannot, pray let me have a line, though I know your answer; and the more certain I am of it the more I feel ashamed of this letter. I really feel myself unhinged to a great degree, and till I see you, which I hope will be soon, or hear from you, shall feel very unpleasantly. I feel the part I am acting to be contrary to every principle of conduct I ever laid down for myself, and that I can bring myself to act it at all I strongly suspect to be more owing to my weakness than my judgment.

"I am, with the sincerest friendship,
"My dear Lord,
"Yours ever,
C. J. Fox.

"St. James's Street, Saturday morning." *

* Rossl. MSS.

Loughborough, in the anguish of his soul, wrote to Sheridan the long and resentful letter which I have introduced in the life of Thurlow.* But he contented himself with a few formal lines to Fox:—

Lord Loughborough's answer to Mr. Fox.

"MY DEAR SIR,

"I will frankly confess to you that the measure appears to me a strong indication of weakness, and I am deceived if it will not be generally so felt as soon as it is known. This affords additional reason why, even on motives of prudence, I should acquiesce in it, which I do, I assure you, without the smallest interruption of those sentiments of friendship and confidence with respect to you or the Duke of P., which will ever remain in my heart.

"I ever am, my dear Sir, yours,

"LOUGHBOROUGH.†

"Guildhall."

Though told that he was excessively ill-used, and taunted by some old Tory friends for his credulity in believing that the Whigs would really do him a kindness, and advised to return to his old colours, he steadily adhered to the cause of the Prince of Wales and Mr. Fox,—and he strenuously defended the constitutional doctrine upon which they rested the hereditary right of the heir apparent.‡

Dec. 3. 1788. He defends the opinion of the Whigs as to the right of the heir apparent.

A rumour having been spread of the arbitrary advice he had given, that the Prince should, by proclamation, assume the government, and issue orders to the Parliament, to the army, and to the magistrates, he thought himself justified in disclaiming it, and he actually supported the motion for the appointment of a committee to inquire into and to report to the House the state of the King's health, by an examination of the physicians who attended him,—contending that this

* Vol. V. p. 584.

† Rossl. MSS.

‡ The world had now a whimsical instance of the manner in which the opinions or professed principles of contending factions are influenced by interest. The heir apparent being with the Whigs, they advocated the doctrine of hereditary right, representing it as almost indefeasible; while the Tories, perceiving that they were in great danger of being driven from office if the Regent were appointed by address with unlimited powers, entirely sacrificed the doctrine of hereditary right, and, in substance, made the crown elective.

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proceeding was altogether constitutional, and according to the usage of Parliament.* When the report was presented, and Lord Camden commented upon the strange doctrine said to have been asserted *elsewhere,* "that when his Majesty's incapacity was ascertained and declared, the heir apparent, being of age, had a claim to take upon himself the administration of the government as a matter of right, while his Majesty laboured under the disorder which rendered him unable to discharge the regal functions," Lord Loughborough rose and said, "I understand, my Lords, it has been asserted elsewhere, *that the Prince of Wales, the heir apparent to the throne, has no more claim to exercise the government during the continuance of the unhappy malady which incapacitates his Majesty than any other individual subject.* If the regency be elective, my Lords, such is the consequence; and the regency is elective if the doctrine which the noble and learned earl so keenly controverts is not a part of our constitution. The question simply is, whether, upon the personal incapacity of the Sovereign, the regency is elective? No one, I believe, denies that, by the common law of this realm, and by various statutes, the crown is hereditary. Indeed, any person who, by advised speaking or writing, shall aver the contrary, is liable to be prosecuted, and incurs the penalties of a *præmunire.* How is this compatible with *election,* where there exists a competent heir apparent? There are, indeed, two supposable cases when *ex necessitate* the two Houses must fill the vacant throne, there being no heir apparent *in rerum naturæ* — the one where there is a total subversion of the government, by a breach of the original contract between the King and the people, as at the Revolution; and the other where the royal line should have become extinct, — a King, on his decease, leaving no heir. Where there is an acknowledged heir apparent, who must succeed on the King's natural death, may the two Houses elect another as Regent, and invest him with all the powers of royalty? He might then give the royal assent in the name of the incapacitated King to an Act for changing the succession to the crown,

* 27 Parl. Hist. 658.

and making himself the head of a new dynasty. It is more probable that the two Houses would set up a mock Regent, and assume the government themselves. A Regent so elected must necessarily be the slave of his electors. The single instance of an elected Regent is that which occurred in the reign of Henry VI., and led on to the wars of York and Lancaster. Then this House, by its own authority, without the concurrence of the Commons, appointed the Duke of York — Regent or Protector. Are your Lordships prepared to follow that precedent, and will its authority be conceded by the other branch of the legislature? Both Houses together now could not make a Turnpike Act, and yet we are told that they may elect a Regent. Then I suppose they may elect a plurality of Regents, and give ours the form of a Mahratta government, or put an end to the kingly office, and entirely change the constitution. What in the meantime becomes of your connection with Ireland, where the two independent Houses may choose one Regent, while you choose another; in which case the two kingdoms would be as completely severed as Portugal is from Spain. But it is said that the Prince of Wales is only a subject, and that while his father breathes he has no more right to govern than any other subject. No more right! Is the Prince of Wales a common subject? Does not the law describe him to be one and the same with the King? Lord Coke expressly declares this to be so. Is it not as much high treason to imagine or compass the death of the Prince as of the King? Is it high treason to imagine or compass the death of any other individual subject? It so happens that in this case the two Houses are duly summoned by the King's writs, and, in consequence, are legally assembled; but if, upon such an emergency, there had been no Parliament in existence, will any man say that it would not have been warrantable for the Prince of Wales, as heir apparent, to have issued writs, and called Parliament together? What becomes, then, of your assertion, that in his father's lifetime he has no more right to interfere with the government than any other subject? I maintain that by the constitution of England the regency is not elective, but depends on hereditary right; and the heir apparent is entitled,

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Lord Loughborough's denial of the imputation that he had advised the Prince of Wales to seize the regency *manu brevi*.

during the interruption of the personal exercise of the royal authority by his Majesty's illness, to assume the reins of government. When I make this observation, *I am very far from meaning to intimate that the Prince of Wales can violently do so without the privity of the two Houses of Parliament*; but I do solemnly maintain, that upon the authentic notification to him by the two Houses of Parliament of the King's unfortunate incapacity, he is of right to be invested with the exercise of the royal authority."

Nevertheless, it was voted by both Houses, "that it was their right and duty to provide the means of supplying the defect of the personal exercise of the royal authority, arising from his Majesty's indisposition, in such manner as the exigency of the case may appear to them to require."*

Notes from Mr. Fox to Lord Loughborough.

While these discussions were going on, the three following notes were sent by Mr. Fox to Lord Loughborough; but I am not able to ascertain their dates or the particular occasions when they were written:—

"My Lord,

"After considering what your Lordship said, and mentioning it to L[d] F. and one other person, I think I had rather decline meeting the persons we mentioned—not so much from any objection to the meeting itself as from an apprehension of the construction that might be put upon it.†

"I am, with great regard,
"My Lord,
"Your Lordship's obedient servant,
"C. J. Fox.

"Thomas's Hotel, Friday night.

"P.S.—I beg leave to add that I feel myself much obliged to you for the open manner in which you have spoken to me upon the subjects in question."‡

* 27 Parl. Hist. 853. 882.

† The imprudence with which the Whigs conducted their deliberations at this time may be surmised from the following extract of a letter from Lord Carlisle to Lord Loughborough:—"Our open councils and our generous confidence in the secrecy and discretion of the whole club at Brooke's—not excluding the waiters—has, I fear, the small inconvenience of flinging difficulty in the way of negotiations upon which the great affairs of the world turn."—*Rossl. MSS.*

‡ Rossl. MSS.

"My dear Lord,

"I cannot say that I agree with you in your opinion, though I own I am inclined to think it the next best to that which I prefer of fighting in the H. of C^s^. upon the subject of the establishment. We have a great force in town, and if the leaders will behave stoutly, I have little doubt but the troops will do so too. Can you come here to-night, or early in the morning? At all events, I cannot let slip this opportunity of expressing to you my sense of the very handsome manner in which you have acted throughout, and particularly in regard to what passed this morning.

"I am very truly, my dear Lord,

"Yours ever,

"C. J. Fox.

"Downing Street, Tuesday night.

"I have not seen H. R. H., but expect him here every minute."*

"My dear Lord,

"If this does not find you in town, I hope it will bring you to town as soon as possible. There never was a situation that called for wise advice so much as ours, and we are driven to decision almost before we have time to deliberate. I know you have as much inclination as ability to counsel us, and every thing must depend upon what we do before we go down to Parliament this day.

"Yours very sincerely,

"C. J. Fox.

"Downing Street, 9 o'clock, Tuesday.

"I shall be here or at home all morning."†

Thurlow breaks with the Prince's party.

Meanwhile Lord Loughborough's zeal was sharpened by the dazzling prospect again opening to him of being at last able to grasp the Great Seal. Thurlow having obtained secret intelligence from Dr. Addington of an improvement in the King's health, was drawing off from the Prince's party, and was looking out for an opportunity to imprecate curses on his own head when he should forget his sovereign. Mr. Fox, rejoicing that he was freed from the promise given without his knowledge, and that it was

* Rossl. MSS.

† Ibid.

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now in his power to realise the hope which he himself had held out respecting the Chancellorship under the Regency, made this communication to Lord Loughborough:—

Letter to Lord Loughborough from Mr. Fox, promising him the Great Seal.

"My dear Lord,

"I could not collect from the conversation yesterday much of what is like to be the course of Thurlow's argument. He seemed to think it a more confused and difficult case than it has ever appeared to me; and therefore, if I were to guess at all, I should suspect that he will choose rather to answer the arguments of others than produce many of his own. My general conclusion from this part of our conversation, as well as that relative to restrictions, was, that he had thought less upon the subject than I should have supposed possible.

"The negotiation is off, with an express desire on his part that no more may be said to him on the subject till the Regency is settled, and *advice* to the Prince to make his arrangements without any view to him. It was much the pleasantest conversation I have had with him for many years. Upon the business of our interview, he was perfectly open and explicit, and dismissed the subject as soon as possible with perfect good humour, in order to talk upon general ones in our old manner of conversing. He was in a talkative humour; and France, Spain, Hastings, Demosthenes, and Cicero were all talked over as if between two friends who had neither political connection or enmity. In short I think the negotiation is fairly at an end; and if when the Regency is settled the Prince wishes to revive it, it must be considered as a proposition entirely new, and treated upon that footing.

"I am very sorry to hear that nothing has been done about a protest, nor do I know whom to employ, as I am going out of town, without an intention to return till Monday. My opinion is that it should be very strong in its expressions; and the danger of putting the unlimited power of legislation into the hands of the two Houses of Parliament explained at large.

"I am, my dear Lord,
"Yours ever,
"C. J. Fox.

"St. James's Street, 26th Dec."

"If I were to tell you the advantage my health and spirits have received from our conversation yesterday morning, you

would perhaps think either that I exaggerated, or that I am weaker than a man ought to be." *

A.D. 1789. Lord Loughborough objects to the restriction on the Regent about making Peers.

When the resolution came to be debated against the Regent being allowed to make Peers, Lord Loughborough was particularly severe on the suggestion of Lord Camden, that if there was an urgent necessity for a new peerage it might be created by Act of Parliament. He showed the mischief of encouraging any such idea to obtain ground, and urged the danger of its being considered sanctioned even by the opinion of any one individual Peer of Parliament, in debate, reminding their Lordships that although a Peerage Bill might originate in a message from the Regent, the Commons would immediately be let into their share of creating a Peer, the honour of the Peerage would be put to the vote, and thence a most unparliamentary interference of the other House with the constitution of their Lordships' House would be established, — a doctrine too monstrous to be endured for a single moment! The public good required that the entire free and unrestrained power of creating Peers should remain with the Executive Government, and their Lordships should recollect the ancient mythological fable representing the Temple of Honour as placed behind the Temple of Virtue, indicating to us that a peerage should be conferred for great public services, and not for practising the arts of a demagogue." †

And the clause against alienating the King's private property.

With a view to make the Regency Bill and its author as odious as possible to the Prince, Loughborough pointed out the insulting nature of the restriction against alienating the King's private property, and felicitously quoted a legal decision, in which it was held by the Judges to be a libel for one man to send to another the commandment out of the Decalogue, "THOU SHALT NOT STEAL," as it implied that the person to whom it was sent was a thief. ‡

Jan. 28. 1789. And the transfer of the patronage of the household to the Queen.

Having in vain attempted to resist the very unfair proceeding of putting the question jointly on the two resolutions, "That the Queen should have the custody of the King's person — and should likewise have the appointment of all

* Rossl. MSS.
† 27 Parl. Hist. 1067.
‡ Ib. 1082.

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officers of the household"—acknowledging the fitness of the former, he proceeded to combat the latter with great boldness and vigour: "In discussing this subject," said he, "it is very material to bear in mind that the object for which the monarchy is established is the good of the people, and that our constitution is framed upon the principle of vesting in the Monarch — only that portion of power and influence which is necessary for carrying on the Executive Government. But from party motives, or a mockery of adulation to the afflicted Sovereign, (who, if he were conscious of your proceedings, could not decently be supposed, from jealousy of his son, to approve them,) having curtailed the salutary prerogative of the Crown, you are now going to deprive it of its patronage. You are establishing two Courts—one of the Regent—another of the Queen,—and there may very likely be a rivalry between them. You may take a lesson from a country which, in all matters of constitutional learning, you affect to despise. Louis XIV. conceived a dislike to his nephew the Duke of Orleans, and wishing to aggrandize his own natural son, the Duke de Maine,—by his will left the administration of public affairs to the Duke of Orleans, as Regent, and the control of the household, with the custody of the person of the infant King, to the Duke de Maine. The will was duly registered in the Parliament of Paris; and the Duke of Orleans was told by the royal testator, that he was to enjoy every thing to which his high birth entitled him. But when Louis XIV. died, the Regent, now heir presumptive to Louis XV., by the renunciation of the Duke of Anjou, then King of Spain, claimed all the powers and privileges which properly belonged to the Regency. The Parliament felt itself in an awkward dilemma. It saw the danger of yielding to the claim of the heir presumptive; but it likewise saw the absurdity of placing the Regent at the head of the Government, and placing in the hands of another the means by which the government was to be carried on. Wisely weighing all the difficulties of the case, and preferring the lesser evil to the greater, the Parliament set aside the late King's will, and invested the Regent with all the authorities of the

Crown. It is said her Majesty is to be assisted by a council— which will only make matters worse, by rendering her section of the government more conspicuous, more efficient, and more mischievous. Around her all will rally who are dissatisfied with the Regent because he has so little to bestow, and foreign ministers will intrigue with her councillors when they cannot carry a point they are pressing on the responsible Ministers of the Crown. We have such idle reasoning in defence of putting the patronage of the household in the hands of the Queen—as that the King would feel his mind disturbed when awakened from his trance, if he found that his lords and grooms in waiting had been removed from about his person. Suppose that his Majesty's trance had taken place some years ago, would it have been any consolation to him if his Ministers, on their first audience after his awakening from it, had thus addressed him: 'Your Majesty has lost thirteen colonies, but—your palace stands where it did! Millions of national debt have been accumulated, but —your lords with white staves stand where you left them! Much of the best blood of your subjects has been spilt, but —not a page of the back stairs has been removed! Many calamities have happened in consequence of your son and representative being deprived of the constitutional power which your Majesty enjoyed, but—be not concerned, the same beef-eaters, holding the same halberds, still surround you! Weep not for national disgrace and universal suffering, for peruse the Red Book, and you will find it as you left it!!! When his Majesty is restored to reason, he will feel insulted by those who impute to him such paltry and childish considerations, instead of the enlightened patriotism which belongs to the father of his people."* But the resolution was negatived by a majority of 94 to 68.†

* This prophecy was by no means fulfilled; for George III. looked with absolute abhorrence upon all who he was told had opposed the limitations on the Regent, or the transference of the household to the Queen. He was actuated by a belief that they had entered, with his son, into a conspiracy to prevent him from ever remounting the throne; and in his best subsequent days he never could be convinced of his error.

† 27 Parl. Hist. 1088—1093.

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When the Prince of Wales received the proposal from Mr. Pitt, that he should accept the office of Regent under the mortifying restrictions to be laid upon him, he immediately wrote the following note to Lord Loughborough:

Letter from the Prince of Wales to Lord Loughborough.

"MY DEAR LORD,

"I have just received a letter from the Minister, with such restrictions as no Dictator c[d] possibly, I think, ever have been barefaced enough to have brought forward. Pray come to Charles's as soon as you possibly can, to take these matters into consideration. I am, my dear Lord,

"Most truly y[rs],

"G. P."

Lord Loughborough attended the meeting, and concurred in the prudent advice that his Royal Highness,—protesting against the course which was followed,—should still, for the public good, conform to the wishes expressed by a majority of the two Houses.

He took no part in the subsequent debates as to the opening of Parliament by the "phantom" of the Great Seal, under the supposed authority of the insane sovereign, or as to the provisions of the Regency Bill, which, however objectionable, he considered irrevocably settled by the Resolutions previously adopted. He was now desirous of seeing the Regency established as soon as possible. The Prince of Wales, having with such reluctance agreed to accept the office with mutilated powers, expressed deep resentment against the present Ministers, who, he conceived, had treated him so unhandsomely, and professed himself more than ever a devoted partizan of the Whigs. The intrigue which had induced him to promise that there should be no change in the custody of the Great Seal had actually terminated in Thurlow taking a decided part against him, and weeping in the House of Lords at the thought of deserting the afflicted King. No doubt was entertained, therefore, that as soon as the Regency Bill had received the royal assent, by the agency of the "phantom," there would be a Whig Administration, and the Regent would have a new Chancellor. The Chief Justice of the Common Pleas had an express

promise, not only from Mr. Fox but from the Prince himself, that he should be the man.

Lord Loughborough again seems to be in possession of the Great Seal.

But while he was considering whom he should appoint his secretary and his purse-bearer, and while applications were pouring in upon him, from all quarters, for commissionerships of bankrupts and livings in the church, his hopes were again blasted. Rumours of the King's recovery, at first discredited, became stronger and stronger, and on the 19th of February, Lord Chancellor Thurlow, in the House of Lords, as soon as prayers were over, left the woolsack, and announced that his Majesty was convalescent. He therefore suggested the propriety of suspending farther proceedings on the Regency Bill; and, — casting a malicious glance at the Chief Justice of the Common Pleas, —he added, "I congratulate your Lordships on the prospect of his Majesty's complete and speedy recovery, to which I am sure the wishes and prayers of *all* his Majesty's subjects are directed." In a few days George III. resumed the personal exercise of the royal authority, with the deep-seated determination, which he was at no pains to conceal, of showing implacable resentment against all who, during his illness, had taken part with the Prince of Wales. Nor could they entertain any hope that he would be frustrated in his purpose; for the nation rejoiced on this occasion in being rescued from the Whigs; the King's popularity was unbounded, and his power, for a season, was greater than that of any Plantagenet, Tudor, or Stuart who ever filled the throne of England.*

And is again disappointed.

King's recovery and unbounded popularity and power.

Lord Loughborough's continuing intimacy with the Prince of Wales.

Lord Loughborough, although banished from St. James's, continued in high favour with the heir apparent, and was for some time his chief counsellor. A few days after the notification of the King's recovery, he was summoned to a conference, by the following note from his Royal Highness: —

* I have heard a high legal dignitary, now no more, say: "It is a remarkable circumstance that George III., at the commencement of his reign, when in the full possession of his faculties, was abused, ridiculed, thwarted, and almost driven into exile; but when he was deprived of reason, — the nation, falling prostrate before him, called out, 'A God! a God!'"

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"My dear Lord,

"I have received a letter from the Queen, which requires some consideration. I wish much to have your advice. Pray call upon me at five o'clock, if you can.

"Ever sincerely yours,
"G. P.

"Carlton House, half-past one o'clock,
Feb. 21st, 1789." *

Any attempt which he made to bring about a reconciliation between the members of the royal family entirely failed, and both the Prince of Wales, and the Duke of York, who had taken part with him, were treated by their parents with great harshness. In the Rosslyn MSS. I find in Lord Loughborough's handwriting the draught of a letter from the Prince to the King, which must have been written during the following summer: —

Letter from the Prince of Wales to the King, written by Lord Loughborough.

"Sir,

"Thinking it probable that I should have been honoured with your commands to attend your Majesty on Wednesday last, I have unfortunately lost the opportunity of paying my duty to your Majesty before your departure from Weymouth.

"The accounts I have received of your Majesty's health have given me the greatest satisfaction; and should it be your Majesty's intention to return to Weymouth, I trust, Sir, there will be no impropriety in my then entreating your Majesty's gracious attention to a point of the greatest moment to the peace of my own mind, and one in which I am convinced your Majesty's feelings are equally interested.

"Your Majesty's letter to my brother the Duke of Clarence in May last, was the first direct intimation I have ever received that my conduct, and that of my brother the Duke of York, during your Majesty's late lamented illness, had brought on us the heavy misfortune of your Majesty's displeasure.

"I should have been wholly unworthy the return of your Majesty's confidence and good opinion, which will ever be the first objects of my life, if I could have read the passage I refer to in that letter, without the deepest sorrow and regret for the effect produced upon your Majesty's mind, though at the same time I felt the firmest persuasion that your Majesty's generosity and goodness would never permit that effect to remain without affording us an opportunity of knowing what had been urged against us, of reply-

* Rossl. MSS.

ing to our accusers, and of justifying ourselves, if the means of justification were in our power.

"Great, however, as my impatience and anxiety were on this subject, I felt it a superior consideration not to intrude any unpleasing or agitating discussions upon your Majesty's attention during an excursion devoted to the ease and amusement necessary for the re-establishment of your Majesty's health.

"I determined, therefore, to sacrifice my own feelings, and to wait with resignation till the fortunate opportunity should arrive, when your Majesty's own paternal goodness would, I was convinced, lead you even to invite your sons to that fair hearing, which your justice would not deny to the meanest individual of your subjects.

"In this painful interval I have employed myself in drawing up a full statement and account of my conduct during the period alluded to, and of the motives and circumstances which influenced me. When this shall be humbly submitted to your Majesty's consideration, I may possibly be found to have erred in judgment, and to have acted on mistaken principles, but I have the most assured conviction that I shall not be found to have been deficient in that duteous affection to your Majesty which nothing shall ever diminish. Anxious for every thing that may contribute to the comfort and satisfaction of your Majesty's mind, I cannot omit this opportunity of lamenting those appearances of a less gracious disposition in the Queen towards my brothers and myself than we were accustomed to experience, and to assure your Majesty that if by your affectionate interposition, those most unpleasant sensations should be happily removed, it would be an event not less grateful to our minds than satisfactory to your Majesty's own benign disposition. I will not longer, &c. &c. &c.

"G. P."

I conclude this long, but I hope not uninteresting chapter, with a letter from the Prince of Wales to Lord Loughborough, showing his Royal Highness in a very amiable point of view — and leading to the charitable belief that, with much native goodness of heart, he was betrayed into his subsequent errors by the perils of his high station, and by adverse circumstances over which he had little control: —

Creditable letter from

"My dear Lord,

"The excessive goodness and friendship I ever have experienced from you, makes me trespass, I assure you much against my

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the Prince of Wales to Lord Loughborough, excusing his absence from a party of pleasure, on account of his attending the sick bed of his brother.

wishes, once more upon you, hoping that you will forgive my absence this evening from a party, which I am certain, from every thing I have hitherto witnessed, must afford the greatest pleasure and delight to all whose minds are perfectly at ease, and who have nothing to occupy them but the hospitable and pleasing reception you give all your friends. But, to tell you the truth, my dear Lord, I am very unfit for any thing either so gay or so agreeable. The anxiety I have undergone the whole of this day has worried me to death, and though, thank God, the physicians assure me that my brother is as well as can be, considering the violence of his complaint, yet I should feel miserable to leave him. Could I have the pleasure of seeing you in Bedford Square this night, I should wear the same countenance of pleasure, which I am sensible that all those who have not a sick bed to attend naturally must do at your house. I am sure, from what I know of you, that you will feel for me, and, *for once, forgive me for the disappointment I occasion myself.*

"I remain, my dear Lord,

"Ever most sincerely your friend,

"GEORGE P.*

"York House, half-past 12 o'clock, P.M.
July 2d, 1789."

* Rossl. MSS.

CHAPTER CLXXI.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL HE WAS MADE LORD CHANCELLOR.

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Lord Loughborough continues a Whig.

ALTHOUGH the Whig party was now in a very low and seemingly hopeless condition, Lord Loughborough adhered to it for several years, and continued on the most friendly and familiar footing with Fox, Sheridan, and Burke. Nevertheless, he attended little in Parliament, and from the King's recovery till the middle of the session of 1791, only one speech by him is to be found in the printed Reports: that was on the malt tax, the increase of which he strenuously resisted; but so slender was the attendance of Opposition peers, that he could not venture to divide the House, lest being appointed teller he should be under the difficulty of grammatically reporting to the House that there was only one NOT CONTENT.*

Dec. 27. 1790. Lord Loughborough's fortunes at a very low ebb.

While Lord Loughborough continued a leader of the Whigs, he took an active part in all the measures and manœuvres of that party—even to the arrangement of seats in the House of Commons. I will copy one curious letter to him on this subject from William Adam, afterwards Lord Chief Commissioner for jury trial in Scotland—as it gives a curious picture of the old "nomination system."

Dec. 30. 1790. Lord Commissioner Adam to Lord Loughborough

"MY DEAR LORD,

"The following lines are written in consequence of a conversation I had yesterday with the Prince of Wales, when I had the honour to be with his Royal Highness, and in which he expressed himself with the utmost anxiety, and at the same time under difficulty about the mode of obtaining what H. R. H. has so much

* 28 Parl. Hist. 1202. I have heard a teller in the House of Commons say "the noes were one." He defended himself by observing, that he could not have said, "the NOES *was* one." Q. What ought he to have said,—adhering to the established form?

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respecting nomination seats in the House of Commons. 1789–1792.

at heart. At the same time that I am executing the commands of H. R. H., I need not inform your Lordship how much those commands coincide with the wishes of the Duke of Portland and all our friends.

"It is understood that Lord Lonsdale has two seats yet to fill up — one for Haslemere and one for Appleby, and that he has not fixed upon the persons who are to fill those places. H. R. H. is extremely anxious that Sir William Cunnyngham should be recommended to Lord Lonsdale. But under the circumstances in which H. R. H. says he stands with Lord Lonsdale, he thinks it cannot flow directly from him. What he has desired me to do, therefore, is to request of your Lordship to open this matter to Lord Lonsdale, to assure him of Sir William Cunnyngham's attachment to H. R. H., and *of his being ready at any time to vacate his seat, if Lord Lonsdale should signify to him his disapprobation of his politics*, and that if the Prince is referred to by Lord Lonsdale, his Lordship will find his Royal Highness most anxiously zealous for Sir William's success.

"Ever, my dear Lord,

"Yours most faithfully,

"William Adam."*

March 29. 1791. He successfully attacks Mr. Pitt on the Russian Armament.

After a long silence, Lord Loughborough took courage again to engage in parliamentary conflict, when Mr. Pitt had got into some difficulty and discredit by his negotiation with the Empress Catherine, and by the ill-advised "Russian Armament." In the debate which followed the King's message upon this subject, he strongly inveighed against the foreign policy of the Government. "It is matter of serious consideration," said he, "by what fatality it happens that year after year we are thus to be involved in disputes in every quarter of the world. If we are to travel on in this course of blind and irrational confidence, yielding abject assent to every scheme of Ministers, what must be the result? His Majesty has sent a mandate to the Court of Petersburgh which the Empress has not thought fit to obey. Is the mandate to be enforced by arms? It is fortunate that we are still on the brink of the precipice: before we plunge into the abyss below, let us pause and look around us. It is with astonishment and horror that I see the King's Ministers

* Rossl. MSS.

taking a general sweep of all kingdoms and states — meddling, irritating, and insulting. To please them we are now to be involved in a war with Russia, without any provocation and without any object? A tax has lately been imposed which deprives the labouring man of his most wholesome beverage, to defray the expenses of this wanton aggression. Do your lordships flatter yourselves that this can continue? —that by such resources you are to maintain a system of outrage, of conquest, and of depredation? I do not wish to enter into any general eulogium of the National Assembly of France; but surely their unanimous and truly politic declaration that they will for ever avoid wars on speculative and theoretical points, ought to have suggested to us a wiser course. The revolution in France presents to us the means of reducing our establishments, of easing the public burdens, and of securing to us for a length of years the blessings of peace." — Afterwards he strongly supported Lord Porchester's motion for a vote of censure on Mr. Pitt, for the armament against Russia, saying, "I rejoice that the negotiation has terminated amicably; but it now becomes necessary to inquire whether arming the country was necessary, and what good end it has answered? I admit that this country has an interest in the affairs of the Continent, and in the conduct of Russia towards the Porte; but when you had armed, you receded. It is impolitic to drum to arms, and to be afraid to strike a blow. In my humble opinion an armament and the intention to use it ought never to be disjoined. It appears that Ministers had resolved to abandon their object before the armament was nearly completed, and yet they continued to arm as if the safety of the State had been in peril." Mr. Pitt's conduct was so strongly blamed out of doors, that the Opposition in the Lords, by Lord Loughborough's advice, now ventured to divide; but they could only muster 19 to 98. *

Lord Loughborough's opinion of the French Revolution. Feb. 27. 1792.

Lord Chancellor Thurlow, with the view of rescuing Warren Hastings from his troubles, having contended very

May 16. 1791. He beats

* 29 Parl. Hist 48. 96.

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obstinately that an impeachment by the House of Commons abates on a dissolution of Parliament, our Chief Justice not only gained a great victory in argument, but, being supported by the opinions of Lord Camden and Lord Mansfield, actually carried the question by a majority of 66 to 18 *; so that the impeachment dragged its slow length along, till he himself was actually on the woolsack.

Thurlow on the question, whether Hastings's impeachment had abated by the dissolution of Parliament.

The Attorney General of Lord North was now under the auspices of Mr. Fox, the warm supporter of all liberal measures, and was running a similar cycle to that which had astonished mankind, when, after leaving Lord Bute and Toryism, he had gained the loud applause of Lord Chatham by standing up so boldly for "Wilkes and liberty."

Lord Loughborough a strong liberal.

May 31. 1791. He supports Catholic emancipation.

He spoke strongly in favour of the Roman Catholic Relief Bill †, although it is now certain that when he became the keeper of the King's conscience, he poisoned the royal mind by scruples about the coronation oath, and that he obstructed the policy which he at this time supported.

1791, 1792. And Fox's Libel Bill.

To another measure which fortunately was then actually passed, he gave very effective aid — without which it must have been defeated — Mr. Fox's famous bill for declaring the right of juries to decide the question of "libel or no libel?" Although Mr. Pitt, still a liberal and constitutional Minister, was favourable to it, his wayward Chancellor most furiously opposed it, — and, sad to relate! he was backed by the whole body of the Judges. In all the stages of the bill during two sessions, Lord Loughborough gallantly defended it by the side of the venerable Camden, to whose consistent and pure love of liberty — ever to be held in reverence — this constitutional triumph is mainly to be ascribed. These were the most striking observations of the occasional patriot: — "The monstrous doctrine of the noble and learned Lord on the Woolsack, though meant to restrain the Press, is highly favourable to libellers. In the struggle between the judge and the jury, the guilt or innocence of the defendant is little thought of, and the jury heedlessly acquit him to show their

* 29 Parl. Hist. 523. 532 543.

† Ib. 682.

power. But they must be allowed to consider the intention of the publication;—otherwise the free and fair discussion of political subjects, and even texts of Scripture, may be construed into a libel. For my own part I have deemed it my duty to state the law as it bore on the facts, and to refer the combined consideration to the jury. Are the judges to say to the jury, '*Find the defendant guilty now, as he is proved to have published the writing complained of, and when he comes before us for sentence, we will tell you whether or not it is a libel.*' It is the admitted maxim of law—'ad questionem juris respondeant judices,—ad questionem facti juratores;' but when the law and the fact are blended, it is necessarily and undoubtedly the right of the jury to decide. You say that jurymen are incapable of comprehending the character of a publication charged to be criminal, and that this must be referred to enlightened judges. At the Old Bailey an alderman of London is a co-ordinate judge with the Chief Justice of England. Nay, indictments for libel may be tried at Quarter Sessions, and fox-hunting squires being the judges, are exclusively to decide upon the literary production set forth as a libel. One absurdity follows another; it is well known that special jurors whom you disqualify are generally magistrates,—and you would deprive them of all power when impanelled in the jury box,—while sitting on the bench you would make them decide the guilt and award the punishment."*

June 15. 1792. The Great Seal in commission. Lord Loughborough leads the alarmist Whigs to join Pitt.

But immediately after the passing of the Libel Bill events happened which greatly influenced the opinions and actions of Loughborough. Thurlow was dismissed from the office of Chancellor, and the Great Seal was put into the hands of Eyre, Ashurst, and Wilson as commissioners—obscure men, none of whom could aspire to the Woolsack. Sir Archibald Macdonald, the Attorney General, having been promoted by mere family interest, looked no higher than the office of Chief Baron, then considered little better than a sinecure. Sir John Scott was Solicitor General, but he could not be put over the head of his superior officer. The Chief Justice

* 29 Parl. Hist. 1294. 1299. 1428. 1535.

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of the Common Pleas saw that if by any means he could be reconciled to the existing Administration, the golden prize might after all be his own.

The times were propitious for such an overture. Mr. Pitt's reputation as a statesman had been a little tarnished by the "Russian Armament;"—and the Whig Aristocracy, always powerful in talent and in family connection, had been recovering their popularity,—so that if they remained united they might be expected soon to be formidable rivals for office. Unhappily, they were divided upon the view to be taken of the French Revolution. The majority of the party, headed by Fox, regarded it as a great regeneration in France, and likely to produce a salutary influence in other countries, by illustrating the beneficial consequences of a constitutional Monarchy, based upon the principles of popular representation and equal rights;—while a considerable section of them concurred with Mr. Burke in thinking it a conspiracy of spoliators and atheists, which, unless it were crushed, would first desolate the land where it broke out, and then throw into confusion the whole civilised world. Lord Loughborough, as we have seen *, had hitherto expressed nothing but approbation and hope when he discussed the proceedings of the National Assembly,—but he was now filled with apprehension and alarm; he declared in all companies, that in such a crisis—without regard to party considerations — the hands of Government should be strengthened, for the purpose of guarding the nation against the imminent peril with which it was threatened; and he openly applauded, in his place in Parliament, the proclamation issued by the Government against seditious publications.

Negotiation for transferring the Great Seal to Lord Loughborough.

A negotiation was now opened — one of the most important in our party annals, for upon the result of it depended, not merely the disposal of the Great Seal, but whether Fox or Pitt was to be Minister, and whether there was to be peace or war between this country and the new Republic of France? We have a very graphic account of it in the Diary of the Earl of Malmesbury, showing that it was chiefly conducted between

* *Antè*, p. 217.

Loughborough and Henry Dundas; that the Great Seal was the bait by which the wily Chief Justice, leading on the alarmist Whigs, was to be lured; that he himself was eager to join the Government as soon as possible, but that the other side were not willing to receive him till he could bring a large number of converts in his train, and that great difficulties arose from a lingering regard of those who were inclined to follow him,—and particularly of the Duke of Portland,—for Mr. Fox*:—

Lord Malmesbury's Diary, giving an account of Lord Loughborough's intrigue.

"*June* 16.—Dundas first wrote, and then spoke, to Lord Loughborough, expressing his wish that this temporary union would become a permanent one. He held out four vacant places—the Chancellor (his own), the Secretary of State for Home Affairs, the President of the Council and Privy Seal—besides two or three Privy Councillors' places in the House of Commons, and the Lord Lieutenancy of Ireland. Lord Lough[h] took all this *ad referendum*, and was now come to talk it over with the Duke of Portland." "*June* 15.—The Duke of Portland related to me that Lord Lough[h] had the night before met Pitt at Dundas's; that he spoke with great openness and appearance of sincerity; that on Lord Lough.'s asking him whether the King knew it, Pitt said he did not come with the King's command to propose a coalition, but that he would be responsible it would please the King and the Queen, and that the only difficulty likely to arise was about Fox, and that difficulty entirely owing to Fox's conduct in Parliament during the last four months. That *every thing else* was entirely forgotten, and that he himself did not recollect, that in all their parliamentary altercations a single word had ever dropped from either of them to prevent their acting together without any fair reproach being made of a disavowal of principles, or an inconsistency of character," &c. "*June* 16.—Dinner at Lord Lough.'s, with Fox. While Lord Lough. was engaged with his company, I talked with Fox, and afterwards carried him to Burlington House. He had not heard of the last meeting with Pitt, and did not make

* While these negotiations were going on, Harry Dundas said to an old friend, "Wedderburn would now give all he has in the world not to have framed the York Resolutions [while he was a patriot]: he knows that the King will never forgive him for that." Lord Loughborough's present Anti-Jacobin zeal made him well received at court; but George III. could not forget his conduct on the Regency, which made him more obnoxious even than the York resolutions, or his inflammatory speech at the Thatched House, when he was toasted as "Steward of the Chiltern Hundreds."

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himself (as he generally does) practicable. He doubted Pitt's sincerity, and suspected he had no other view than to weaken their party, and strengthen his own; that to divide the Opposition was his great object; he doubted also the King's having consented accordingly to dismiss the Chancellor, and seemed to think it *possible* that a new Administration might be formed through him, from which Pitt was to be excluded." "*June* 17.—Lord Lough. called on me; he related very accurately all that passed between him, Pitt, and Dundas on the Thursday evening. Pitt, he said, wore every appearance of sincerity and frankness." "*June* 19.—Lord Lough. with me. He said he really thought it unreasonable to expect that Pitt should quit the Treasury;—that he could not, and *would not*, make such a proposal." "*June* 22.—Burke wished to see me, and I went to breakfast with him. He said there was no doing without Fox or with him; that he wished it to be declared by the heads of the great Whig party, that all systematic opposition was at an end; that for the better security, and in order to give a strong and convincing mark of it, Ld. Lough. should, by being made Chancellor, represent the party in the Cabinet, and be the link between them (the Whig party, he meant, and the Government), in order that, if on some future day the difficulties now arising from Fox's character and conduct should decrease, or the distresses of the country increase, a junction might be accomplished in a more easy and natural manner than even by the beginning the whole afresh." "*July* 5.—Lord Lough. related to me a long conversation he had a few days before with Fox, in which he said Fox appeared more harsh, impracticable, and opiniative than he could have supposed him to be; that he saw no chance of any thing being done while Fox remained in his present temper of mind. He appeared hurt by Fox's behaviour and manners towards him." "*July* 27.—The Duke of Portland told me this day that the Garter had been offered to him, through Lord Lough., which he had refused." "*Dec.* 18.—Lord Lough. called on me; he was greatly hurt at the Duke of Portland's inaction and Fox's violence. He urged the necessity of his talking to the Duke of Portland, and going to him in a body, to compel him to declare himself either decidedly for, or decidedly against, Fox." "*Dec.* 20.—At Lord Lough.'s particular request, Sir Gilbert Elliot went to the Duke of Portland, to know what was his opinion as to Lord Lough.'s taking the Seals. The Duke was decidedly against it, and said he would never consent to it."

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Difficulties in the way of the negotiation.

Loughborough was now in a great rage at finding himself thus baffled, and determined to act a very decisive part for himself. Parliament had been suddenly called together by proclamation, and the first anti-Gallican measure was the Alien Bill,— to prevent the importation of republican principles. By this, contrary to the common law, the vexatious and useless system of passports was established for all aliens; the Secretary of State was authorised to expel all aliens from the kingdom, and regulations for the discovery of all aliens were imposed on the keepers of inns and lodging-houses, to be enforced by the punishment of transportation. The second reading of the bill being violently opposed by the Earl of Lauderdale and the Marquess of Lansdowne, it was gallantly defended by the aspirant Chancellor. Said he: "My Lords, my regard for the laws of the country, and the obligations of religion, and the allegiance I owe to the Crown for the protection I receive from it, demand my support to the Government upon this occasion. The bill is indeed an extraordinary measure; but is not the situation in which we stand extraordinary? The period most resembling the present is the reign of Elizabeth, when the overgrown power of Philip agitated and alarmed every surrounding nation. Actuated not only by ambition, but by religious fanaticism, his greatest efforts were excited against this island. Money, forces, seditious writings, emissaries, were employed to excite plots in England, insurrections in Ireland, and an invasion from Scotland against the Queen; but they were employed in vain,— owing to the wise regulations adopted by that Princess and her Parliament. At present a great and powerful people, actuated by a new fanaticism of infidelity, are endeavouring to propagate over Europe principles as inconsistent with all established government as they are with the happiness of mankind. However extravagant the new doctrines may be, they have undoubtedly made some proselytes in this country, and though in numbers they are as yet comparatively insignificant, they are stirring and active in their mischievous purposes, in hopes of domestic insurrection and confident of foreign aid. During the temporary success of the combined

Dec. 21. 1792. Lord Loughborough's speech in favour of the Alien Bill.

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sovereigns their voice became more faint, but the moment that the tide of war turned in favour of France they resumed their courage; sedition broke out with increased violence, and clubs and societies for propagating their baleful opinions were formed all over the kingdom. Embassies were sent to France to congratulate the National Assembly on their victories, and even to promise the assistance of numbers here who would rise up in their cause, and who, in return, expected fraternal help to overturn the Constitution of England. In France anarchy and confusion triumph. There they had long vilified the Christian religion; but now, incredible as it may seem, public professions of Atheism have been made in full convention, and received with unbounded applause. It has been solemnly proclaimed that there is no God, and the basis of their new institutious is Atheism. The sanctity of the seventh day was very soon abolished by them, and they have at last destroyed the relation of parent and child. Their false prophet has taught that no honour is due to the parent, who in his turn may abandon the child. Robbery, murder, and licentiousness not only go unpunished, but are encouraged as meritorious acts. False testimony is a proof of patriotism, and so entirely are all ideas of property subverted, that it has lately been announced from authority that the farmer has only possession of the corn he has reaped as a trustee, but that the beneficial property is in the public, who have a right at their discretion to take it from him without recompence. It has been said that the fears of Ministers are affected, and that there is no foundation for the alarms which they have circulated. Ministers are tauntingly called upon for their proofs. Parliamentary scepticism may be allowed; but if any man out of the House were to hold such language, he would be laughed at. A proper sense of danger pervades all ranks of men, and all but the disaffected are ready to come forward in the common cause. Although the disaffected be few, they must not be despised. Your Lordships should recollect that the massacres of Paris in September were perpetrated by not more than

200 persons, in the midst of a city containing 600,000 inhabitants, with 30,000 men under arms. Let us not think lightly of what may be achieved by a small band, armed with daggers, under the cry of '*No King!*' We might already have been in a worse situation than when the metropolis was blazing and the mob were triumphant in 1780, had not Ministers wisely preserved the public tranquillity by calling out the militia, and making the military preparations that now resound in all quarters. The noble Earl has complained of loyal associations,—which are not legal, but meritorious, as tending to strengthen the hands of Government, and preserve civil and religious liberty. By the Constitution of this country, all are bound actively to assist in putting the law in force. I will tell the noble Earl what associations are illegal and punishable: associations to publish resolutions condemning the conduct of judges and juries, and vilifying the free institutions under which we and our fathers have lived and been happy. We ought to give Ministers all the powers they ask, and the confidence which accompanied the decree of the free city of Rome in times of public danger: *Quod caveant Consules ne quid detrimenti capiat respublica!* I have no difficulty in saying that the present situation of this country would have justified a stronger measure than this bill for the regulation of aliens. I hope the people will now rush forward to assist the Executive Government in its paternal purposes,—burying all past differences and disputes in oblivion."

This speech was received with loud cheers by the Ministerialists, and Loughborough flattered himself he had made such an impression upon his own friends, that the Duke of Portland, as the leader of the alarmist party, would immediately have risen and declared that they approved of all he had said,—in which case the transfer of the Great Seal would have taken place next morning. But the Duke, though repeatedly urged, remained profoundly silent: a suspicion existed that he and those more immediately under his influence still adhered to Fox, and the Chancellorship was too high a price for one solitary desertion. The continuation

Difficulties from the Duke of Portland's reluctance to leave Mr. Fox.

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of Lord Malmesbury's Diary brings the intrigue to its consummation much more strikingly than any laboured narrative:—

Progress of the negotiation between Lord Loughborough and Mr. Pitt.

Dec. 22. — 3 o'clock. Lords Loughborough and Porchester, Burke, Sir G. Elliot, Anstruther, Dr. Lawrence, and Elliot of Wells, met at my house. Lord Loughborough said he had been with the Duke of Portland — that he had had a very long and explicit interview with him — that the Duke had entered fairly into the subject—that he had declared himself as averse as he himself was to Fox's principles and motions—but that he was of opinion it was not yet time to break with him, — and that it would be better to try for every possible means of reconciliation. He was convinced that Fox had lost himself by what Baldwin had told him, and that he himself was a partaker of his unpopularity,—yet that still he wished to keep on terms with him. Lord Loughborough then stated to us how such a conduct, inasmuch as we were considered as belonging to the Portland party, involved us in all the unpopularity and disgrace attending Fox's principles;—that therefore it was become necessary to decide what was to be done, and how the duke of Portland could be obliged to delare his sentiments to be contrary to those of Fox. Burke with his usual eloquence talked for an hour. We sat till it was time to go to the House, without coming to any other conclusion than that we would meet again in greater numbers, and the next day was fixed for that purpose. —At the House of Lords I saw Lord Carlisle; he was for Lord Loughborough's accepting the Seals as a pledge for the good intentions of the party."—" *Dec.* 26. The Alien Bill passed, opposed by Lord Guilford, and Lords Lansdowne and Lauderdale. These two made violent and mischievous speeches. Lord Loughborough answered them in one of the finest speeches possible. But the Duke of Portland, to the great concern and grief of his friends, did not say a word. I urged him repeatedly to get up, but he said he really could not, he felt it impossible: that Lord Loughborough had said all that could be said, and that it was impossible to speak after so fine a speech. I pressed him to say those very words and nothing more, but without effect."—" *Dec.* 27. I received a letter very early from Lord Loughborough, lamenting and complaining of the Duke of Portland's silence,—lamenting it from public reasons,—complaining of it from the injury it did his numerous body of friends who wish to hold high the honour of his name:—

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Lord Loughborough's letter to Lord Malmesbury.

"MY DEAR LORD,—Though I am sensible that I spoke with some effect to-night, I am not young enough to feel on that account any satisfaction that can make up for the Duke of Portland's silence. The few words in which he expressed to me his approbation, pronounced upon his legs, would have had more effect on the House and on the public than ten speeches. The House had waited for his declaration; the course of the debate called for it—particularly in the latter part between Lord Lansdowne and me, and still he left it in doubt which of us spoke his sentiments,—knowing too, that Lord Lansdowne's party make no scruple to use his name against his intentions, and will not fail to quote his silence against my speech; and this at a moment when the connexion with Lord Lansdowne was so plainly marked. The Duke of Portland hesitates whether he shall withdraw his countenance from a party formed of Lord Lansdowne, Fox, and Grey, under the auspices of *Chauvelin.* What a position that is for his character, and those numerous friends who, not only from personal attachment, but as a great public point for the country, wish to hold high the honour of his name! I do not think I shall compose myself to-morrow into a fit temper to go to Burlington House, and present my remonstrance to him; but I dare to say Lord Lauderdale will not fail to be there. I wish Sir Gilbert Elliot and you would consider what is to be done, for I cannot devise any measure to retrieve the mischief of this day to the Duke of Portland. The House of Commons will not make up for it. The only thing that could be effectual would be a positive declaration to the party that has left him—that he holds them as entirely detached, and not less in opposition to him than to Government. But that I despair of. I could not help writing this to you, tired as I am, but yet more vexed than tired."

"*Dec.* 27. At 3 o'clock I went to Lord Loughborough's in Bedford Square. He had lying on his table when I came in (he returned at the same moment from a ride) a letter from the Duke of Portland. He read it, and on giving it me to read, said, '*This is worse and worse.*' The letter was to explain the motives of his silence [out of regard to Fox]. Lord Loughborough was violent; he said he was betrayed; and it was with some difficulty I prevented him from going immediately to Burlington House."—"*January* 1. 1793. Lord Loughborough with me early; he, eager for a further *eclaircissement* with the Duke, and for laying the whole before the public: I, still for waiting, if possible, to the end of the recess. Lord Loughborough from me went to see the Prince of Wales in

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the evening."—"*January* 4. Lord Loughborough, at Lady Payne's, showed me a letter from Dundas, pressing him to decide as to taking the Great Seal, saying that he and Pitt had abstained renewing the subject for some time past, under the plea that there were still hopes of having the Duke of Portland; that this was now considered to be at an end. Lord Loughborough answered that he still had some hopes that a letter he intended to write would produce some effect; and it was of such importance to be joined by so respectable a character as the Duke of Portland, he still wished to wait."—"*January* 14. I wrote a letter to the Duke of Portland, explicit of my opinions and intentions. Dined at Batt's; Lord Loughborough there. No answer from the Duke. He had seen Dundas, and stated to him fairly that the consequences of his taking the Great Seal would be, that forty or fifty members *only* would join the Government. That as many more, now with the Government, would probably return to Opposition; that it was for Ministers to consider whether it was for their interest to take him on these conditions."—"*January* 18. I saw Lord Bute in the morning; he a little warped. Strongly against Lord Loughborough taking the Seals; said it would make all who followed him unpopular to a certain degree. I dined with Lord Loughborough with only Anstruther. He declared his determination of taking the Seals; only doubted as to the time. I advised him to see the Duke of Portland first; and, above all, to fix Windham to engage him to approve it on his legs in the House of Commons."—"*January* 20. Called on Lord Loughborough. He returned with me, and went from my house to meet Pitt by appointment. He stayed with him about an hour and a half, and then came back to me. He told me war was a *decided measure*; that Pitt saw it was inevitable, and that the sooner it was begun the better—that we might possess ourselves of the French Islands*; that the nation now was disposed for war, which might not be the case six weeks hence."—"*January* 21. News of the sentence of death being pronounced on the King of France. Called at Burlington House twice. Duke of Portland not at home."—"*January* 22. Wrote a letter to Pitt at Lord Loughborough's. Dined with Pitt and Dundas at Wimbledon. I was two hours with the Duke of Portland. He lamented Fox's conduct, and particularly blamed it, if it were true (which he did not think) that he had given Sheridan authority to speak for him at the meeting held at

* This discloses the erroneous principle on which the war was afterwards conducted.

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Negotiation completed, and Lord Loughborough is Chancellor at last.

the 'Crown and Anchor' on the liberty of the press."—"*January* 23. Lord Loughborough called upon me on his return from Westminster Hall. He said Pitt had again repeated to him what he had said before about me. I repeated to him what had passed at Burlington House. We concluded it was a favourable moment for him to see the Duke: he therefore read me a letter, stating his intention of taking the Seals; and his reasons, which he rested on the duty of every man now doing his utmost to serve his country, and the cause in which it was going to engage. This letter he asked me to carry; but, on reflection, it was determined that it had better go through Baldwin, of whose understanding the Duke of Portland had a high opinion, and who he thought was attached to him. Baldwin, therefore, was to go to Burlington House in the evening."

In a few days Lord Loughborough was enabled to announce to Mr. Pitt the full adhesion of the Duke of Portland, and thereupon the bargain was closed.

In the Rosslyn MSS. I have found a great number of letters, written during this negotiation to Lord Loughborough, by Mr. Burke, the Earl of Carlisle, Mr. Ralph Payne (afterwards Lord Lavington), and Mr. Pitt, which present a very lively picture of the state of parties during this crisis, and which will be of much use to the historian of the reign of George III. Some of the most interesting of them will be found in an Appendix to this memoir.

Lord Loughborough had met with such disappointments when he had thought the Great Seal within his grasp, that he is said to have been very nervous on the day fixed for his receiving it,—feeling a sort of superstitious dread that a spell had been cast upon him, and that by some mysterious decree it had been ordained, that however often or closely he might approach the object of his pursuit, he should never reach it.

Lord Loughborough's sensations on receiving the Great Seal.

However, no political embarrassment—no visitation from Heaven—now frustrated his hopes,—and on the 28th day of January, 1793, at Buckingham Palace, the Great Seal was actually delivered into his hand by George III.* Carrying

* Jan. 29. 1793.—The Lords Commissioners for the custody of the Great Seal of Great Britain, having delivered the said Great Seal to the King at the Queen's House on Monday, the 28th day of January, 1793, his Majesty the same day delivered it to Alexander Lord Loughborough, Chief Justice of the Court of Common Pleas, with the title of Lord High Chancellor of Great

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it home in his coach, he exultingly showed it to Lady Loughborough, though he afterwards declared he was still a little afraid that he might awake and find that he had once more been deluded by a pleasing dream. He never acknowledged to others the farther truth that a few days' possession showed to him the utter worthlessness of the object for which he had made such exertions and such sacrifices.

Britain, who was then sworn into the said office before his Majesty in Council; and the next morning came into the Court of Chancery, in Westminster Hall, attended by several Peers, &c., and in open Court took the oaths of allegiance and supremacy, and the oath of Chancellor of Great Britain, the same being administered by the Deputy Clerk of the Crown, the Master of the Rolls (covered) holding the book; which being done, Mr. Attorney General moved that it might be recorded by the Clerk of the Crown in Chancery, which the Court ordered accordingly.—*Minute Book*, No. 2. fol. 42.

CHAPTER CLXXII.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL THE CONCLUSION OF HASTINGS'S TRIAL.

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Gibes against the new Chancellor.

THE new Chancellor was most cruelly assailed by the Opposition press as a renegade. The quotation was often repeated —

> "Thou hast it now;
> ——————— and I fear
> Thou play'd'st most foully for't."

His own saying was revived with respect to curing "the bite of the tarantula of Opposition by the music of the Court."* In the midst of much coarse vituperation, which he must have despised, he was probably more stung by the following playful *jeu d'esprit* of Matthias, which was repeated and laughed at in Burlington House, as well as in all other fashionable societies: —

"The Serenata of ACIS AND GALATEA has been performed in Downing Street, to a private company. The part of *Acis* by Mr. Pitt, *Polypheme* by Lord Thurlow, and *Galatea* by Lord Loughborough. The barytone of Lord Thurlow was quite *Polyphemeish*, and fully sustained; but it was impossible to do justice sufficiently to Lord Loughborough's *diminuendo*, when he *died away in the arms of Acis.*"

The object of these pleasantries, however, by no means incurred now the same obloquy as when in 1771 he left his party, without a companion, to be made Solicitor General. If *he* counterfeited what he did not feel, — the dread of revolution professed by the "alarmist Whigs" was sincere; and although they at first discouraged the notion of his taking office, the Duke of Portland, Lord Spencer, and Mr. Windham soon followed his example. We may fairly gather the sentiments of that party from a letter of Sir Gilbert Elliot to Lord Malmesbury, written from Minto, the very day before the transfer of the Great Seal actually took place.

* *Antè*, p. 82.

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After expressing his own determination not to accept office, he says, —

Jan. 27. 1793. Letter from Sir Gilbert Elliot respecting Lord Loughborough's acceptance of office.

"With regard to Lord Loughborough, I think the question stands on different grounds. His acceptance of the Seals I believe sincerely to be eminently necessary for the public service. His conduct has been highly honourable, and every thing like personal claim or even party claim on him by the Duke of Portland is certainly at least cancelled, if not converted into a direct *provocation*, by what has passed since the commencement of this session. But the public good, in my opinion, *requires* his services; and for that reason they are *due* from him. I shall certainly not only approve but applaud his acceptance of the Seals. It is for every man to consider whether the public has the same claim on him. I cannot feel that my services *in office* are of the smallest moment to the country; but the circumstances of the country may become such as to require all our aid, in every way in which it is called for."

Some who had narrowly watched the career of the "wary Wedderburn" declared that he would have supported a revolutionary movement, and held the Great Seal under the directors of the "Anglican Republic," if this had appeared the better course for gratifying his ambition; but in the Anti-Jacobin frenzy now prevailing he was very generally applauded for magnanimously leaving his party when it had become infected with the bad principles which he had so boldly denounced, and for the dexterity with which he had carried so many partizans along with him to rally round our time-honoured institutions. Thus was he congratulated by Burke: —

"My dear Lord,

Congratulations from Burke.

"Since I saw you last, the catastrophe of the tragedy of France has been completed.* It was the necessary result of all the preceding parts of that monstrous drama.

"Though I looked for something of that kind as inevitable from the day when the Rights of Man were declared, yet when the fatal and final event itself arrived, I was as much levelled and thrown to the ground, in the general consternation, as if it were a thing I had never dreamed of.

"I felt and I feel deeply: but I have recovered myself. I have now only to think of the past, which you, and those who have got

* The murder of Louis XVI.

enough of spirit, energy, and abilities to come forward in the service of your country, are obliged to take in this awful crisis of the world.

"I hear that your Lordship is to take the Great Seal next Tuesday. I think we are all much obliged to his Majesty for this arrangement. The King has acted wisely in his choice. You have done your duty in your acceptance. I should have thought you criminal, in your circumstances, if you had declined to do a service to the public, which you alone can do.

"The time requires exertions of uncommon vigour and compass. It is therefore proper to add all possible strength to an Administration which has for its object effectually to defend the Constitution of this kingdom, and the liberties of Europe, against French principles and French power. This never can be done by those who have declared their concurrence with the one, and their good wishes in favour of the other. There is a confraternity between the two divisions of the French faction on the other side of the water and on this. They are both guilty, and equally guilty, of the late acts which have wounded to the quick all the moral feelings of mankind. If you had no other reason for going into the great trust you have accepted than as a mode of expressing your perfect detestation of the English branch of that infernal faction, and of your total alienation from any connection whatsoever with any of its leaders, I should think that motive alone would be sufficient to recommend the step you have taken to every honest mind. I shall not think that the honour of your high situation is complete until I find you abundantly censured and libelled by them.

"My dear Lord, I regret that you do not carry in along with you those whom I shall ever love, value, and lament. But their error is not your fault. I prognosticate good things to the morals, virtue, and religion of the world from this appointment. Let me not find myself mistaken. You have undertaken a task of great responsibility. I know the purity of your motives—but the public will judge of them by your future conduct, and the effect of your services. I am sure you have my most sincere good wishes. I am, with a very affectionate attachment,

"My dear Lord,

"Your Lordship's faithful and affectionate humble servant,

"EDM. BURKE.

"Duke Street, Jan. 27. 1793."*

* Rossl. MSS.

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As soon as the intelligence reached Swisserland, it called forth the following effusion from the Historian of the Decline and Fall of the Roman Empire, now become, from dread of *Sans Culottes*, a convert to Church establishments, and a defender of the Inquisition:—

And from Gibbon.

"My Lord,

"I do not merely congratulate your Lordship's promotion to the first civil office in the kingdom—an office which your abilities have long deserved. My satisfaction does not arise from an assurance of the wisdom and vigour which Administration will derive from the support of so respectable an ally. But as a friend to government in general, I most sincerely rejoice that you are now armed in the common cause against the most dangerous fanatics that have ever invaded the peace of Europe—against the new Barbarians who labour to confound the order and happiness of society, and who, in the opinion of thinking men, are not less the enemies of subjects than of kings. The hopes of the wise and good are now fixed on the success of England, and I am persuaded that my personal attachment to your Lordship will be amply gratified by the important share which your counsels will assume in that success.

"I could wish that some of your former associates possessed sufficient strength of mind to extricate themselves from the toils of prejudice and party: but I grieve that a man whom it is impossible for me not to love and admire should refuse to obey the voice of his country; and I begin to fear that the powerful genius of Mr. Fox, instead of being useful, will be adverse to the public service. At this momentous crisis we should enlist our whole force of virtue, ability, and spirit,—and, without any view to his private advantage, I could wish that our active friend Lord Sheffield might be properly stationed in some part of the line.

Mr. Necker, at whose house I am now residing, on a visit of some days, wishes me to express the sentiments of esteem and consideration which he entertains for your Lordship's character. As a friend of the interest of mankind he is warmly attached to the welfare of Great Britain, which he has long revered as the first, and perhaps as the last, asylum of genuine liberty. His late eloquent work, '*Du Pouvoir Exécutif*,' which your Lordship has assuredly read, is a valuable testimony of his esteem for our Constitution; and the testimony of a sagacious and impartial stranger

may have taught some of our countrymen to value the political blessings which they had been tempted to despise.

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I cherish a lively hope of being in England, and of paying my respects to your Lordship, before the end of the summer. But the events of this year are so uncertain, and the sea and land are encompassed with so many difficulties and dangers, that I am doubtful whether it will be practicable for me to execute my purpose.

"I am, my Lord, most respectfully, and (your Lordship will permit me to add) most affectionately,

"Your most obedient and faithful humble servant,

"E. GIBBON.

"Rolle, Feb. 23d, 1793." *

He takes leave of the Court of Common Pleas.

"On Monday, the 4th of February, the Chancellor came into the Court of Common Pleas to take the oaths on his new appointment, and sat for a short time as Chief Justice. Before he retired, his Lordship took leave of the Bench and the Bar in a very elegant address, expressive of his gratitude for the uniform attention and respect which he had received during the time he had presided there." †

His qualifications as an Equity Judge.

We are now to view him as the chief Equity Judge, and presiding over the general administration of justice in this country. As far as *representation* went, no one ever acted the part with more applause. In the first place, his style of living was most splendid. Ever indifferent about money, instead of showing mean contrivances to save a shilling, he spent the whole of his official income in official splendour. Though himself very temperate, his banquets were princely; he entertained an immense retinue of servants, and not dreaming that his successor would walk through the mud to

* Rossl. MSS. In the year 1796, when Lord Sheffield was publishing Gibbon's Miscellaneous Works, he asked Lord Loughborough's permission to include this letter in the collection, but was refused. He then made a second application, in a letter which lies before me, and thus begins: "My dear Lord, — Pelham and Serjeant were with me when I received your Lordship's answer on the subject of publishing Gibbon's letter of congratulation. They wondered, as well as myself, that you should object. There is nothing fulsome, nor more said than perfectly natural and proper; but as the letter is happily expressed in regard to the times of Mr. Necker, it is a pity it should be lost; and by erasing your name, and the name of your office, your objections perhaps may be removed." Lord Loughborough was very sensitive upon the subject of his coalition with Mr. Pitt, and he remained inflexible.

† 2 Hen. Black. 132.

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His splendid mode of living.

Westminster, sending the Great Seal thither in a hackney coach,—he never stirred abroad without his two splendid carriages, exactly alike, drawn by the most beautiful horses,—one for himself, and another for his attendants. Though of low stature and slender frame, his features were well chiselled, his countenance was marked by strong lines of intelligence, his eye was piercing, his appearance was dignified, and his manners were noble. To the Bar he was impartially courteous, never favouring, or being afraid of, any man who practised before him. While sitting on the bench, he devoted his whole attention to the arguments addressed to him, unless when it was necessary to give a hint of "wandering" or "repetition;"—and from his quick perception of facts, and capacity of being made to understand nice legal questions with which he was little familiar, he was praised by Chancery practitioners as an Equity Judge rather beyond his merits.

His deficiencies.

They had no jealousy of him as a common lawyer, for he had been bred in their school, and he certainly knew as much of equity as of law. Unfortunately, he would not now submit to the labour and drudgery necessary for acquiring permanent reputation as a magistrate. When out of court, instead of dedicating his time to the consideration of the cases pending before him, or in reviving and extending his juridical knowledge, he was absorbed in politics, or he mixed in fashionable society, or he frequented the theatre. The *beau idéal* of a perfect Chancellor does not present to us a mere slave to judicial duties, neglecting all that is elegant and liberal; but such a man, regularly trained in his profession, and possessing a good understanding and upright intentions, would distribute justice more satisfactorily to the suitors, than another who, without these qualifications, may aim at uniting in his own person the reputation of a Bacon, a Somers, and a Shaftesbury. However, Lord Loughborough's dazzling accomplishments, joined with his characteristic discretion, covered his defects; and although he lived in very factious times, I do not find incompetence for his office, or remissness in the discharge of it, ever gravely imputed to him.

Praise of him by Butler.

According to Butler, who had often heard him, and was well quali-

fied to compare him with his predecessors, "His judicial oratory was exquisite. The greatest detractors from his merit acknowledged the perspicuity, the luminous order, and chaste elegance of his arguments. Like Lord Camden, he frequently and successfully introduced law phrases into them." Yet the panegyrist is obliged to acknowledge that he betrayed "a want of real taste for legal learning." The lenient view taken of him while in office by contemporary lawyers was partly to be accounted for by their pride in having at their head a gentleman and a scholar—a man "wholly above any sordid feelings of avarice or parsimony, and only valuing his high station for the power which it conferred, and the dignity with which it was compassed round about." * But when we come calmly to review his judgments, we cannot much commend them, and we are astonished to find with what a small modicum of juridical acquirement a man may reputably fill the most exalted judicial office. They are recorded in the 2d, 3d, 4th, and 5th volumes of Vesey, junior. † Going through them with a view to select some of importance and interest, I am a good deal disappointed,—although my expectations were not very high. Considering that Lord Loughborough presided in the Court of Chancery above eight years, it is wonderful how little he added to our equitable code. By far the best judgments given in the Court of Chancery during this period were by Pepper Arden, Master of the Rolls, afterwards Lord Alvanley.

His judgments.

Yet a few cases decided by our Chancellor may be stated with the hope of instructing or amusing the reader. In *Graham* v. *Johnstone*, in which he held that the personal property of an intestate wheresoever situate must be dis-

On intestacy, personal property to be distributed

* Lord Brougham's Sketches, i. 85.

† He was unlucky in his reporter. I knew this gentleman well. When near eighty, he was still called "VESEY, *junior*," to distinguish him from his father, "Vesey, senior," the historiographer of Lord Hardwicke. He was a very good-natured fellow, and very honest and painstaking, but very dull. He wrote his notes in shorthand, which never will produce good reporting. He has succeeded much better with Sir William Grant, whose judgments, when delivered, were perfect in thought and expression; but he was quite unequal to the task of abridging, arranging, and giving the spirit of any discourse which he heard.

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according to the law of the domicil of the intestate.

tributed according to the law of the country in which he was domiciled, his acquaintance with the civil law enabled him to deliver an able dissertation on the law of domicil. The suit arose out of a disputed claim to certain personal property in Scotland which had belonged to the last Marquess of Annandale, who had long been a lunatic. — *Lord Loughborough.* "First I must look to see what was his domicil when he became lunatic, for it could not be changed afterwards by any change of residence. Though of Scottish origin, according to the will of his maternal grandfather, his expectations of fortune, settlement, and establishment were in England, and here he chiefly passed his days. He visited Scotland, but without any purpose of remaining there. Having once gained a domicil in England, there it must remain till it changed by the execution of a purpose permanently to abide elsewhere. The actual place where a man is, *prima facie*, is his domicil; but his home may be shown to be elsewhere. You encounter the presumption by showing that the residence is involuntary or transitory. In this case every thing tends to the conclusion, that the place where Lord Annandale was found was the place in which he had resolved to spend the remainder of his life. — If the point were new and open, it appeared to me to be susceptible of a great deal of argument, whether in the case of a person dying intestate having personal property in different places and subject to different laws, the law of each place should not obtain in the distribution of the property situate there. Many foreign writers have held the affirmative, and there was a time when the Courts of Scotland concurred in that opinion; but now I am obliged to consider that personal property has no locality except the domicil of the owner.*

Interference of equity to compel the delivery of specific chattels.

In *Fells* v. *Read*†, Lord Loughborough confirmed the doctrine, that where a man wrongfully withholds the possession of a chattel, the value of which cannot be estimated and compensated by payment of damages, equity will compel him to

* 3 Vesey, jun. 200. See *Somerville* v. *Somerville*, 5 Vesey, jun. 749., in which the law upon this most important subject was finally settled by the admirable judgment of Sir Pepper Arden.

† 3 Vesey, 70.

deliver it up specifically. A club had subsisted from very ancient times, called, "The Past Overseers of St. Margaret's, Westminster," consisting of persons who had served the office of overseer of the poor of that parish. They had a silver tobacco-box, inclosed in two silver cases, all which were adorned with engravings of public transactions and heads of distinguished persons. The box and the cases were always kept by the senior overseer for the time being, who, on coming into office, received them with a charge to produce them at all meetings of the club, and to deliver them up on going out of office to his successor. The defendant, who had so received them, refused to deliver them up, unless certain illegal items in his accounts were allowed by the vestry. — *Lord Loughborough.* "I always regret when I see litigation and expense occasioned by peevishness and obstinacy. But this cause being here, I must decide it upon established principles. A pecuniary estimate cannot be put upon this box with its cases, and therefore the remedy of the rightful owners shall not be confined to an action of trover or detinue. The 'Pusey horn' and the 'patera' of the Duke of Somerset were decreed to be delivered up; a jury might not have given twopence beyond their weight as bullion. We cannot refer the owners of such curiosities, to which they are affectionately attached, and which might fetch a great price at an antiquarian's sale, to the estimate of farmers and mechanics. In some such cases, no damages would be a compensation, and the jurisprudence of the country would be strangely defective, if the spoliator might, by sacrificing a sum of money, set the rightful owner at defiance. This case calls peculiarly for the interposition of a Court of Equity, as the defendant received the box and cases on condition that he would return them at the end of the year, and he is a trustee for the club." *

Contracts to be enforced according to the law of the coun-

Lord Loughborough showed a mind well imbued with juridical principle in deciding the case of *Compte de Perigord* v. *Boulanger*. The famous prince Talleyrand, when the profligate Bishop of Autun, borrowed 70,000 livres from the

* See the authorities collected 3 Vesey, jun. 73. *n.*

try where they are entered into.

defendant, a usurer in France. For this sum, he and the plaintiff, as his surety, became bound by an obligation, which, according to the French law, did not subject them to arrest either on mesne process or in execution. At the breaking out of the French revolution, both the plaintiff and the defendant emigrated to this country; afterwards, the plaintiff, being about to sail on an expedition to the coast of Brittany, was arrested by the defendant for this debt, and, to procure his release, paid him 100*l.* in cash, gave him two bills of exchange for 100*l.* each, at two and four months, and executed a bond for the remainder of the debt, payable at the end of six months after a peace should be concluded between England and France — with interest in the mean time. The plaintiff paid the first bill of exchange, but refusing to make any further payments, and being again arrested, filed this bill for an injunction, and to set aside the securities. *Lord Loughborough.* "I think the proceeding on the part of the defendant has been extremely oppressive and immoral. I am not prepared to say how far the Court will finally grant redress, but I will not allow the defendant to avail himself of an advantage got by duress, which is the sole cause of the new engagement. If it stood upon the original obligation, it would be contrary to all the rules which guide the Courts of one country in deciding on contracts made in another, to give a greater effect to this contract than it would have by the law of the country where it was made. It is against all conscience, that these parties being driven to our shores by a common calamity, the one should be permitted to take advantage of that calamity and to immure the other in a gaol." The injunction was continued.*

A Peer not obliged to answer a bill of discovery filed to ascertain whether he retained a solicitor

The only case of a political aspect which came before Lord Loughborough was *Wallis and Troward* v. *Duke of Portland.*† George Tierney, in 1789, before the split in the Whig party, had been started as a candidate for Colchester, under the auspices of the Duke of Portland, and being beaten at the poll, presented a petition complaining of a false

* 3 Vesey, jun. 449. † Ib. 494.

return. The bill alleged that Mr. Tierney employed the plaintiffs on behalf of the Duke to conduct the petition before the election committee; that they did so, disbursing between three and four thousand pounds; that neither Mr. Tierney nor the Duke would pay them, and that they had no legal evidence against the Duke; they therefore prayed a discovery against him, and particularly that he should answer, whether he had not authorised Mr. Tierney to retain them? There was a demurrer to the bill, on the ground that the transaction relied upon was illegal. — *Lord Loughborough.* "The case disclosed is of this nature: an undertaking supposed to have been entered into between the plaintiffs and the defendant stipulated that he would defray the expense of a petition against the return of a member of parliament. This is an agreement between two parties to the oppression of a third; — in short, it is 'maintenance.' 'Maintenance' is not confined to suits at law, and although there are statutes inflicting penalties for particular sorts of 'maintenance,' it is laid down as a fundamental rule that 'maintenance' is *malum in se* — not merely *malum prohibitum.* Strangers are forbidden to aid the prosecution of suits in which they have no interest, — that justice may be equally administered to all. To speak to a counsel or an attorney for the purpose of encouraging a suit in which the speaker has no interest, has been adjudged 'maintenance.' I do not go into the argument which was very properly urged in support of the demurrer upon considerations of *public policy,* as I think that the discovery would be of a *specific offence,* well known to the law. I am therefore of opinion that a Court of Equity ought not to permit the suit to proceed farther." Upon appeal to the House of Lords, the order allowing the demurrer was affirmed, without hearing the counsel for the respondent. *

to conduct a case before an election committee of the House of Commons.

Refusal to set aside an improvident settlement untainted by fraud.

The case with which Lord Loughborough seems to have taken most pains, as it attracted a great deal of public attention, was *Myddleton* v. *Lord Kenyon.* † The plaintiff, the representative of the ancient family of the Myddletons of Chirk

* 3 Vesey, jun. 503. *n.*

† The judgment extends over fifteen pages of Vesey, jun. vol. ii. 401—416.

Castle, in Wales, having been very extravagant in his youth, — when turned of sixty joined in an arrangement with his son, whereby certain large estates of which he was seized in fee, and others of which he was tenant for life, with remainder to his son in tail, were conveyed to trustees, who were to pay his debts, to allow him such a sum as they should think fit for his support, — and at his death to make over the estates to his son. At this time, having been twice married, he had no thoughts of again entering the state of matrimony — but, caught by the charms of a pretty young girl, he married her much against his son's wishes, and having no means of settling a jointure on her, or providing for the issue expected from this marriage, he filed a bill to have the trust deeds set aside — merely on general charges of fraud and misrepresentation. His counsel chiefly relied upon the improvidence of the father in executing such a settlement, and the equity that he should be relieved from it, after his third marriage. "I admit," said one of them (Mr. Hargrave), "that there is entwisted into the transaction which the plaintiff seeks to invalidate an aggregate of the most unimpeachable integrity; the first of the trustees, Lord Kenyon, is of so peculiar a description, that to suppose him to be privy to a fraud would be to suppose justice itself transmuted — would be to suppose what we must all presume, and I heartily believe, to be a moral impossibility." — *Lord Loughborough.* "I lay no stress upon the character of the trustees. It is very fit that in a court of justice the name of the party should not avail him. But if, instead of names towards which I bear a personal respect, the names of the defendants had been totally unknown to me, or, to put a stronger case, supposing them to be men of whom from former prejudices I had entertained a bad opinion, my decree would unhesitatingly have been in their favour. The plaintiff at an advanced age, repenting too late his past extravagance, found himself possessed of large estates, but without either money or credit. He had long supplied his necessities by granting annuities upon the very worst terms — much worse than those of the most unfortunate dissipated young heir who

has fallen into the worst nest of hornets with which this town is infested. The settlement which was made to free him from his difficulties might in some respects have been more considerately framed; but being free from fraud, I have no control over it. The act of the son in joining to convey the entailed estates to the trustees is consideration enough flowing from him to support it. Each of the parties is *rei suæ arbiter et moderator.* This Court cannot interfere in this case without making itself *arbiter et moderator* of the private affairs of all the families of England. There being no extrinsic fraud charged, none appears on the face of the deeds. Mr. Myddleton complains bitterly of being left dependent on his trustees, but it would have been folly in the extreme for him to have taken to himself a certain income. I ask if there ever was an instance in which under similar circumstances a man in this state of debauch, by granting annuities, (for it is like dram-drinking — it irritates, and inflames, and deadens,) was ever left with a certain income? The purpose would be totally defeated. The old habit would return. If there be a secure fund to be pledged, the facility of raising money offers a temptation known to be irresistible. Then it is objected that no provision is made for a third marriage. I suppose that a third marriage was not in the contemplation of any of the parties. It has taken place. I have no right to blame it, but it was not provided for, and I can no more relieve here than in the not uncommon case of a first marriage early in life, and a settlement without any provision for the jointure of a second wife. An unfortunate situation arises if the first wife dies young, but it would be a strange argument that the settlement should be set aside to the prejudice of those entitled under it, because an event has happened which had not been contemplated by the parties. The last objection is, that the remainder is given to the son. It is sufficient for me that I am satisfied Mr. Myddleton understood what he was about; that he was not deceived as to the extent of this settlement. No person cheated him. They were his own attornies, friends, and trustees who had the preparation of every thing; and when I find

a settlement so made, am I to say — he has been over liberal to his son? Be it so! *Sic voluit.* But I do not know that he could have done a wiser thing than, after he had put his son on a short allowance for a considerable time in order to clear the estate, thinking right to give it to him entirely. We are told that the settlement must either have proceeded from misapprehension or misrepresentation; but I cannot presume either. The plaintiff knew that he was tenant in fee simple of an estate of 7000*l.* a-year, and no man would have dared to tell him that he could not sell that estate to pay his debts without the consent of his son. But it is true that his son's consent was necessary for the purposes he had in view—purposes of the heart, not of sordid selfishness—purposes that it would be the pride of an honourable man at his time of life to have accomplished—so that he might say, 'I have so arranged that, all my debts being paid, my son will be owner of a great estate, maintaining hospitality in his magnificent castle, and enjoying the station and the respect which have long distinguished our ancient line.' Such feelings, according to the evidence, must have actuated his bosom. An eye-witness gives us a touching representation of the scene, when the son, with duty and affection, threw himself into his father's arms, and desired to be guided in every thing by the law advisers whom his father had appointed, and with whom he himself was unacquainted—solicitous only for the honour of the family and his father's happiness. Trustees were named on the part of the father. In this story every thing is reversed. There have been cases where an extravagant son, for a temporary accommodation, has been imposed upon by the father in resettling the estate. Here we have extravagant old age and frugal youth. The father complains that in making provision for the payment of his own debts, he has been overreached by the son. But he suggested every thing, he conducted every thing, and he named trustees whose very names are allowed to be a guarantee against fraud. Finally, Mr. Hargrave emphatically pressed that I should suspend my judgment, as this matter might be privately arranged better than in a court of justice, and that I should interpose by way

of accommodation. Sitting here, I must decide when the case is ripe for judgment, and I cannot recommend where I have no power to decree. It must be the wish of every honourable mind that harmony may be restored between the father and the son, and it is the particular advantage of such a trust as this, that it vests in the trustees a species of jurisdiction upon nice matters of feeling which the public interest will not permit to reside in a judge. Meanwhile the bill must be dismissed with costs."

Endowment of Downing College, Cambridge.

Lord Loughborough had the glory of putting an end to the litigation which had been going on half a century respecting the foundation of Downing College, Cambridge, — deciding that the heir at law had no right to the rents and profits of the estates before the devise was carried into effect — and disposing of all the other points in this suit. But he prudently directed that his decree should be confirmed by an Act of Parliament.*

Famous case on the meaning of Latin words "idoneus moribus et ingenio."

In another academical case, he showed that a man educated at a northern university, though, perhaps, deficient in the niceties of metre, may be as familiarly acquainted with the beauties of the Classics as those who have studied them on the banks of the Isis or the Cam. Mr. Francis Wrangham, afterwards Archdeacon of Chester, and highly distinguished in literature, being a scholar of Trinity Hall, Cambridge, was candidate for a vacant fellowship, contending that he had a *right* to be appointed as he was the only "scholar" who was a candidate; that by the statutes, upon such a vacancy, it was provided "quod in loco socii Collegii subrogetur scholaris idoneus *moribus et ingenio*," and that no objection could be made to his *morals* or his *talents*. The Master and Fellows, however, expressing a dislike to his *manners*, passed him over, and elected the Reverend John Vickars, A.M., of Queen's College. Mr. Wrangham presented a petition to the Lord Chancellor as visitor of Trinity Hall, on failure of the heirs of the founder, praying that this election should be set aside — and the great question debated

* 3 Vesey, jun. 714.; 5 Vesey, jun. 300.

was, whether he was to be considered "scholaris idoneus moribus et ingenio," which turned chiefly upon the true translation here of the word "moribus," — whether it means "morals" or "manners."

The counsel for the petitioner insisted that whenever the word is used by classical writers as descriptive of an individual character, it is particularly confined to *morals*, although when it is appropriated to the description of a nation, it becomes a more general term, and includes the whole *manners* of the people — illustrating their distinction with the following examples: In the dialogue between Pamphilus and Davus, in the Andria of Terence — "uxorem his *moribus* dabit nemo." In Quintilian de Philosophiâ — "*mores* ante omnia oratori studiis sunt excolendi, atque omnis honesti justique disciplina pertractanda." Both senses are found in Horace, according to the rule laid down:

> "Quid leges sine *moribus*
> Vanæ proficiunt?" — *Carm.* 24. lib. iii.

> "Utcunque defecere *mores*,
> Dedecorant bene nata culpæ." — *Carm.* 4. lib. iv.

> "Rursus, quid virtus et quid sapientia possit,
> Utile proposuit nobis exemplar Ulyssem;
> Qui domitor Trojæ, multorum providus urbes
> Et mores hominum inspexit; latumque per æquor,
> Dum sibi, dum sociis reditum parat, aspera multa
> Pertulit, adversis rerum immersabilis undis." — *Ep.* 2. lib. i.

> "Ætatis cujusque notandi sunt tibi *mores*." — *Ars Poet.*

Virgil says:

> ——— "Moresque viris et mœnia ponet." — *Æn.* i.

Tacitus observes the distinction. Speaking of persons put over the city, he says, "magis alii homines quam alii *mores*;" but describing the manners of a nation, DE MORIBUS GERMANORUM, he says, "plusque ibi boni *mores* valent quam alibi bonæ leges." So Juvenal:

> ——— "de *moribus* ultima fiat
> Quæstio.
> Et linguam et *mores*." — *Sat.* 3.

There he means the *manners* of a city. So Martial, speaking of a picture:

"Ars utinam *mores* animumque effingere possit." *Ep.* 32. lib. x.
"Ardua res hæc est opibus non tradere *mores*." *Ep.* 6. lib. ii.
"Templa Deis *mores* populis dedit." *Ep.* 104. lib. 9.

The counsel for the College confined themselves to one quotation, with which they had been supplied by the Fellows, and which they declared to be decisive to prove that "moribus" applied to an individual means *manners*. Ovid, in describing two of his mistresses, for whose *morals* nothing could be said, observes:

"Hæc specie melior, *moribus* illa, fuit."

Lord Loughborough: — "The petitioner's counsel have, with great critical acuteness, and a classical collection of well-arranged instances, contended that in the best Latin writers the word 'mores,' when applied to an individual, is always used to signify *morals*, and when clearly used with respect to a large body, it includes all that larger circle which, for want of a more precise and distinct term, we call *manners*. I doubt a little if that distinction is quite correct; and rather apprehend that the term, whether applied to an individual or a nation, may be used indifferently in the more restrained or larger sense. One instance occurs to me in which, being applied to an individual, it signifies both. It is the beginning of Horace's address to Augustus:

'Quum tot sustineas et tanta negotia solus,
Res Italas armis tuteris, *moribus* ornes.'

"He does not exclude the virtues, and certainly he meant to include all the ornaments, of the character. I recollect another passage which I wish to quote, because the word appears twice in it, and it has a great analogy to the present case: — Says Cicero in his De Officiis *, 'Sed omnium societatum nulla præstantior est nulla firmior, quam cum viri boni *moribus* similes, sunt familiaritate conjuncti. Illud enim honestum (quod sæpe dicimus) etiam si in alio cernimus, tamen nos movet; atque illi in quo id inesse videtur amicos facit. Et quanquam omnis virtus nos ad se

* Lib. i.

alliciat, faciatque ut eos diligamus, in quibus ipsa inesse videatur, tamen justitia et liberalitas id maxime efficit. Nihil autem est amabilius nec copulatius quam *morum* similitudo bonorum. In quibus enim eadem studia sunt eædemque voluntates—in his fit, ut æque quisque altero delectetur ac seipso; efficiaturque id, quod Pythagoras ultimum in amicitiâ putavit, ut unus fiat ex pluribus.' In my conception, considering the manner in which these statutes are framed, the mode of election, and the society the founder has established, he meant to give the electors a full judgment — a taste — a feeling of the qualities of the person they were to subrogate in case of a vacancy — knowing that in such a society, consisting of a small number of persons, to be united under the roof of the same College for the purpose of education, jarring tempers, discordant dispositions, *dissimilitudo morum*, would mar the purpose of the foundation, so different from larger corporations, instituted for more public purposes, and more mixed with the business of the world. I cannot think the founder meant to tie them down to the test of little more than common honesty — without which, a man is unfit to be elected into any society. He rather intended to leave the choice as ample as possible, that the fellows might be in all respects fit for each other. Then have I to inquire further than what they have with great concurrence stated to me, that the petitioner is not fit (non idoneus) to be a member of that society. I cannot, therefore, compel them to elect the petitioner, nor order him to be admitted without an election. It would have been unfortunate, if a college consisting of so few members had been in the predicament, that there were means of forcibly introducing among them a gentleman whom, *however fit for greater and better situations*, they have unanimously declared not fit to be elected as their associate. I must therefore dismiss the petition." * The last observation thrown in to soothe the feelings of the petitioner, who probably was excluded for his superior learning and capacity, shows that gentlemanly turn of mind which always distinguished Lord Loughborough, and covered many of his faults.

* 2 Ves. jun. 609—625.

The great Thelluson cause.

I ought to mention one other case which he decided, because it not only was perhaps the greatest in point of value that ever came before an English Judge, but raised a question of law of much public importance; although it turned on such technical reasoning, that I cannot enter into the arguments on either side, — I mean *Thelluson* v. *Woodford.** Peter Thelluson, by his will, left his immense real and personal property to trustees, that the rents and profits might accumulate during the lives of all his sons, and of all his grandchildren, that should be living at his death, and of any grandchild that should be born within the usual time of gestation after his death — to be laid out in landed estates, which were to be finally divided between the representatives of his three sons — and failing his descendants, to go to pay the national debt. His family disputed the validity of the will, on the ground that although the *corpus* of the property might have been rendered inalienable for a period thus limited, the rents and profits could not be so disposed of; and that it was contrary to public policy to allow such an accumulation, which might render the individual in whom the whole might centre dangerous to public liberty, and too powerful for a subject.

The suit coming on for a hearing, Lord Loughborough called in the assistance of the Master of the Rolls, and of Mr. Justice Buller and Mr. Justice Lawrence. After arguments which lasted many days, they gave their opinions at great length in favour of the validity of the will, and he very politely and prudently said: "I am extremely obliged to his Honour and to my Lords the Judges, not only for the very able assistance which they have given me in forming my own opinion upon this case, which concurs in the result, as in almost the whole of the argument; but also because they have relieved me from the duty of entering particularly into the discussion of the several points of the case, and the grounds upon which the arguments urged for the family have failed to produce conviction on my mind. I could not go over the case without the necessity of repeating what has been much

* 4 Vesey, jun. 227—343.

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better stated already. The great amount of the property is a sufficient reason for the family to seek to establish what would have been their natural right, if no disposition had intervened to deprive them of it. I have no difficulty in saying that this disposition is so unkind and illiberal, that I think it no breach of duty in them to seek to set it aside if they can. The amount of the property, however, can in no possible shape enter into the judgment. The same rule must prevail whether it be estimated at 100*l.* or a million. Nor can the piety or prudence of the disposition be considered. I am bound to give effect to the intentions of the testator, if they do not contravene any rule of law." — He then briefly showed that there was nothing, as the law then stood, to prevent a direction to accumulate during any number of lives in being, together with the additional period of gestation — and thus concluded: — "I should do myself no credit, and should convey no sort of information to the bar, if I were to go farther than to express my full assent to what has been so well stated by his Honour and the Judges, and again to return them warm thanks for their able assistance."

The decree supporting the will was affirmed on an appeal to the House of Lords; but an Act of Parliament, introduced by Lord Chancellor Loughborough, was passed (39 & 40 Geo. 3. c. 98.), forbidding such accumulations in future for a longer period than twenty-one years. All apprehensions of the Thelluson property swelling to a magnitude dangerous to the Crown or to public liberty, were effectually allayed by the Court of Chancery conveniently eating up almost the whole of the annual rents and profits; — and finally the possession of the property was given by Act of Parliament to the family, on their securing to the trust the very moderate sum which would have remained to accumulate after all law expenses were defrayed.

Saying of Lord Ellenborough on Lord Loughborough's judgments.

Although hardly any of Lord Loughborough's judgments were reversed, it must be confessed that their authority has not been considered very high among lawyers. When Lord Ellenborough was dining at a puisne Judge's, — having been long engaged in a discussion with him in the drawing-

room, the lady of the house stepped up, and said, "Come, my Lord; do give *us* some of your conversation — you have been talking law long enough." — "Madam," said the Lord Chief Justice, "I beg your pardon: we have not been talking law, or any thing like law; we have been talking of one of the decisions of Lord Loughborough!"

Lord Loughborough as an appeal Judge in the House of Lords.

Before taking leave of him as a Judge, I ought to mention that while he held the Great Seal he disposed satisfactorily of the Appeal business in the House of Lords. For several years he was assisted in this department by Lord Thurlow; and afterwards, single-handed, he showed how easy is the task of reviewing the judgments of others to a man of good discretion, who is so far imbued with the general principles of jurisprudence as to be able, *pro re nata*, to understand any question of law well argued before him. He was generally inclined to *affirm*, perhaps unconsciously influenced by the practice which still prevailed, that upon affirmance no reasons were to be given; but occasionally he found that the Judges of the Court of Session in Scotland were palpably wrong — when he very unsparingly exposed their blunders — ever retaining a grudge against a tribunal which had done so little justice to his own merits. It is a curious fact, that, although there were now published regular periodical reports of the cases determined in all the Courts of Westminster-Hall, the decisions of the Court of dernier resort were still neglected; and it is wonderful to observe how little they have contributed to the formation of our Civil Code, whereas in most other countries the decisions of the Courts from which an appeal lies are rarely cited as authority.*

* One appeal case is thus mentioned, very much to Lord Loughborough's honour, by the gossiping but sincere Sir John Sinclair: — "In justice to a political opponent, now no more, I think it right to state that, in the most trying circumstances, he maintained the integrity of his judicial character. It is well known how closely he was connected with the late Duke of Portland. The Marquis of Titchfield, the Duke's son, married Miss Scott, the eldest daughter and joint heiress of General Scott. Besides the immense property left by her father, she had likewise a claim, by the death of her relation, Sir Robert Gordon, to a valuable estate in the county of Moray. The other claimant was Mr. Cumming, of Altyre; and in the litigation before the Court of Session, a decision was given in his favour. It was appealed to the Lords, when Lord Loughborough sat on the woolsack. Knowing that, in the particular circumstances of the case, the eyes of the public would be upon him,

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As Speaker of the House of Lords.

We must now view Lord Loughborough presiding as Speaker of the Upper House. Here he appeared to great advantage. From his courtesy and high bearing he was respected by the Peers of all parties; and without arrogating to himself any special control, he had great influence on all questions of order; so that the deliberations of this most irregular assembly proceeded with a tolerable observance of decorum under his auspices. He never gave the signal from the woolsack for Ministerial cheers.

Nevertheless he was a uniform and zealous supporter of the Government, and whatever differences he might have in council with his colleagues, he did not imitate Thurlow's example by displaying a public conflict between the Chancellor and the Prime Minister.

His influence in the Cabinet.

On the accession of the Whig alarmists, whom he had been so instrumental in bringing over, he possessed considerable influence in the measures taken at the commencement of the war. His favourite scheme of subsidising the Continental sovereigns was adopted, contrary to the opinion of Mr. Pitt and Lord Grenville * — and he succeeded in pressing the appointment of his friend, Lord Malmesbury, as the diplomatist to carry it into effect.† But his influence in the Cabinet soon declined, and some of the most important secrets respecting the negotiations with the French Republic were not com-

he earnestly requested Lord Thurlow's assistance in deciding the question. It is singular that Lord Thurlow's opinion was favourable to Lady Titchfield; whereas Lord Loughborough thought the decision should be in favour of Cumming. Had he chosen to acquiesce in the opinion given by Lord Thurlow in favour of the Titchfield family, a large fortune would have devolved on the son of his friend; but, greatly to his credit, he decided in favour of Mr. Cumming. For this single act, so highly favourable to the purity of English jurisprudence, I forgive Lord Rosslyn the injuries he did me." — The worthy Baronet's personal complaint against Lord Loughborough arose out of a dispute, not worth relating, about putting the Great Seal to the charter constituting Sir John's Board of Agriculture.

* "Nov. 14. 1793. Dined with the Chancellor; no one there but Parnell, Chancellor of the Exchequer in Ireland. When he went, I staid some time with the Chancellor. Much substantial talk; — *he*, for giving a large subsidy to the King of Prussia; but Pitt and Grenville think otherwise." — *Lord Malmesbury's Diary*, iii. 6.

† "I received an express, despatched at the desire of the Lord Chancellor, who wrote me a letter, saying, 'he had received a note from Lord Grenville, and that both Lord Grenville and Pitt entreated me to accept a commission on the Continent, of great consequence.'" — *Diary*, ii. 5.

municated to him. He strongly took part with Burke in disapproving of Mr. Pitt's policy as a war minister.

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Feb. 1. 1793. His speech in defence of the war with France.

His first speech, in the House of Lords, as Chancellor, was in the debate upon an address to the King for an augmentation of the forces, in consequence of late events in France, and particularly the tragical end of the French King. He immediately followed the Marquess of Lansdowne, who, deploring this event, still expressed an opinion that there was no sufficient ground for quarrelling with the new Republic, and insisted that Ministers were going to war only in support of metaphysical distinctions between different forms of government.—*Lord Loughborough.* "The catastrophe which has lately happened at Paris has not only changed the garb of this nation, but has impressed every individual in it with sorrow, as on the death of a beloved relative. There would have been a great indecency in excluding all reference to it in the address to the Crown; for it has a material bearing upon our public relations. The noble Marquess has said, that this is to be a war of *metaphysics*, but who are the *metaphysicians* we are to encounter? They are 120,000 French soldiers; their cannon and their bayonets are the arguments which they use. Lessons have been thus taught by them in Nice, Frankfort, Geneva, and the Low Countries. As things now stand, it would not even be sufficient to require France to return within her ancient limits, for she would still leave behind her the contamination of her doctrines, and the poison of her example." He then animadverted upon a profession which Lord Lauderdale had made of a friendship for Brissot; "Friendship and affection," said he, "are matters of taste. I possess none of the innovating taste myself, and so am unable to account for it in others; but the prevailing taste of some men is for revolutions, massacre, war, confusion, and the killing of Kings. I do not envy the congenial taste which forms friendship with the propagator of principles leading to such enormities."* He poured out much more of such invective, which was then very popular; — and an

* 30 Parl. Hist. 331.

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amendment to the address was negatived without a division. I think there is ground to lament the tone of indiscriminate vituperation against all concerned in the French Revolution, which was now assumed in England; for it aggravated the excesses committed in France, it actually endangered the existence of freedom in this country, and it rendered more humiliating to us the victories obtained on the Continent by the republican arms.

His jest on the creation of Baroness Bath, there being a Marquess of Bath at the same time.

Our Chancellor's next appearance was in the character of a jester, which was not natural to him, and which he rarely assumed; but on this occasion he seems to have been much applauded by the Lords spiritual as well as temporal. Miss Pulteney, the heiress of the rival of Sir Robert Walpole, had been created Baroness Bath, there being a Marquess of Bath of another family existing. Lord Radnor made a motion in the House of Lords against this patent,—contending that it was unconstitutional and illegal to create two peers with the same title, and that great inconvenience would arise from it, as in their Lordships' proceedings "BATH" might often appear opposed to "BATH."—*Lord Loughborough.* "My Lords, there have sat in this House, at the same time, Lords Grey, Lords Percy, and Lords Howard, without end. Besides, in this case, there is a sure way of preventing the future antagonism which haunts the imagination of the noble Earl, for the heir apparent of the Marquess being a bachelor, he may marry the young and beautiful Baroness—and then "BATH" will be merged in BATH!"* Lord Radnor had only one peer to divide with him.

"The Reign of Terror."

Much more serious subjects were soon to occupy the public mind. Now began that system of policy for the repression of French principles, which has caused the period in which it prevailed to be designated, in the language of exaggeration, "the Reign of Terror." I think the system was unwise, and that Lord Loughborough is chiefly answerable for it. I am afraid that, if he did not originate, he actively encouraged it, and that he, as the organ of the alarmist party, forced it upon the reluctant Prime Minister. Pitt had not only come forward in public life on the popular side, but I believe that his pro-

* 30 Parl. Hist. 574.

pensities continued liberal, and that if he could have fulfilled his wishes, he would have emancipated the Catholics, — he would have abolished slavery,— he would have established free trade,— and he would have reformed the House of Commons. His regard for the liberty of the press he had evinced by carrying Fox's Libel Bill by the influence of Government, notwithstanding the furious opposition of Lord Chancellor Thurlow. He was likewise particularly adverse to any stringent measures against reformers, being aware that having himself very recently belonged to that body, he would appear rather in an invidious light as the persecutor of his former associates. But he found that he could not adhere to constitutional laws and constitutional practices, without the disruption of his Administration. Burke's indignation was now diverted from Warren Hastings and directed against all who did not agree in condemning every thing that had been done in France since the calling of the States General, and in defending all the ancient abuses of the French monarchy. Lord Loughborough, as his organ in the Cabinet, pressed for measures of coercion and intimidation.

Pitt's reluctance to support it.

It must be acknowledged that the crisis was perplexing. There were unprincipled individuals in this country, who were willing to engage in a revolutionary movement, in the hope of at once rising to power and wealth: and there were enthusiasts who were, without any dishonest motive, desirous of making the experiment of a republic. The often-resounded dread of French *emissaries* was most chimerical; for Englishmen will never be influenced by a foreigner who cannot address them in their mother tongue. But there was no saying distinctly how far the political frenzy might run. The question arose, what was the most effectual method of checking it? We, from our experience, should say,—"by adhering to the ancient frame of the Constitution, by correcting abuses, and by making the laws more loved and respected." A very different conservative view was taken by Lord Loughborough and his friends in the year 1793. Any reform of any enormity they denounced as a dangerous innovation, leading to revolution; they were determined to vest in the Executive Government extraordinary and unconstitutional powers, and

Q. As to the proper measures for checking a revolutionary spirit in this country.

Arbitrary and illiberal policy of Lord Loughborough.

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they vowed vengeance, by the terrors of criminal law, against all whom they denounced as disaffected. Happily, English juries and the returning sober sense of the English people at last saved public liberty from the great peril to which it was then exposed.

April, 1793. The Traitorous Correspondence Bill.

The first measure prompted by Lord Loughborough, after coming into the Cabinet, was called the "Traitorous Correspondence Bill," by which, in addition to the law of Edward III. against adhering to the King's enemies, which had been found sufficient for many ages, it was made high treason, to be punished by hanging, beheading, quartering, forfeiture, and corruption of blood, to hold any correspondence with the French, or to enter into any agreement to supply them with any commodities. This was strongly opposed by Lord Lansdowne and Lord Lauderdale, but on account of a temporary success of the allies on the Continent was defended by the Chancellor in a very vaunting and arrogant tone. "Is it quite clear," he asked, "if the policy recommended by noble Lords opposite had been pursued, that the internal peace of the country would have been maintained? Is it certain that deputations of fraternity to the French Convention would have ceased? that the same general spirit of loyalty we now witness would have been called forth? that those clubs to which some of the opposers of this bill belonged would have shrunk from their purpose, and disappeared? that the projected conquest of Holland would have been abandoned? and that a stop would have been put to a systematic attack on the Government, the religion, and the morals of the country? The noble Lords opposite have sneered at the small force landed on the Continent, under the command of an illustrious Prince: but to the sending out of those troops, and to the promptitude with which the measure was carried into effect, in my opinion, is to be ascribed that Holland is saved, that the French are every where defeated and driven back; that all Europe, from Naples to St. Petersburgh, is delivered from the plunder, the confiscation, the rapine, the murder, the destruction of order, morality, and religion, with which it was threatened

by the prevalence of French arms and French principles." Seven peers, and no more, divided against the bill.* Alas! in a few weeks the Duke of York was forced to fly from Dunkirk, Holland became a province of France, and the Republican legions, bearing the tricolor, were crossing the Rhine and the Alps.

May, 1794. Suspension of the *Habeas Corpus* Act.

In the following year Lord Loughborough supported a bill for the suspension of the *habeas corpus*, on the ground that the societies professing to be founded for parliamentary reform were aiming at revolution. "Parliamentary reform," said he (not very courteously to Mr. Pitt), "was tried, settled, and extinguished in 1781 and 1782, and it can now only be used as a cover for deeper designs. The phrase of *parliamentary reform* no more legalises seditious meetings than GOD SAVE THE KING written at the bottom of an insurrectionary proclamation would make it innocent. Much is said of the low rank of the members of most of these societies, and their little power to do mischief; but it is easy to treat as imaginary all dangers that are checked in the bud. One of the finest poets has said, —

> 'Treasons are never own'd but when descried;
> Successful crimes alone are justified.'" †

June 13. 1794.

In the debate on the Report of a Secret Committee on Seditious Practices, Lord Lauderdale having alluded to political meetings in former times at the Thatched House, and particularly to the dinner given there on the occasion of Mr. Wedderburn, Steward of the Chiltern Hundreds, vacating his seat in the House of Commons, that he might stand up for Wilkes and Liberty ‡, the Lord Chancellor said, "Had the Thatched House meetings of the present day, like their predecessors, confined themselves to foolish speeches, no notice would have been taken of them; but, as they resort to overt acts of treason, they must be put down with a strong hand. §

* 30 Parl. Hist. 738.
† 31 Ibid. 602.
‡ See *antè*, p. 69.
§ 31 Parl. Hist. 915.

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During the recess of Parliament which soon followed, there was a great danger of the Government being dissolved by a quarrel between the old Tories and their new Whig allies. Mr. Burke, notwithstanding his deep affliction from the loss of his son, being asked by Lord Loughborough to step in as a mediator, wrote him the following letter:—

Letters from Mr. Burke to Lord Loughborough, respecting differences between the members of the Government.

"MY DEAR LORD,

"Nothing can be in itself so disagreeable to me as to go to London, or to show to the world the face of a man marked by the hand of God. At first, therefore, I doubted whether I ought to go. I am even now apprehensive of intruding myself into an affair into which I am not called by the parties. I know by abundant experience, under what suspicious circumstances all advice comes that is not required, and how little weight it is likely to have. But since your lordship thinks that heats begin a little to subside, that a way is made for removing difficulties, so that a small matter, even from a very inconsiderable person, may have its effect in setting things to rights, I will come to town in order to receive and to obey your instructions. I propose to be there on Tuesday. There is nothing in my power which I would not most willingly do towards clearing up this dreadful misunderstanding. I really consider the fate of the king and the country, and perhaps at no very remote distance, of mankind itself, may depend upon the good agreement of those now in place. You certainly have done your part and have done it well, and I shall be ready to act under you as you shall direct. There are none of the parties to whom I have not great obligations. Since it has pleased the Great Disposer, contrary to the general order of nature, to keep me here, and without any effort of my own to make provision for my existence, he certainly meant, that as I have neither the aptitude nor the disposition to enjoy any satisfaction, I have some duty in suffering or acting to fulfil. As to the latter part, as I have quitted what is called active life, to which I have been led by reason, inclination, and the sad necessity imposed upon me by sorrow, age, and infirmity, I do not know in what way I can be serviceable but by giving, when asked, such an opinion as I have formed, impartially, on the long and melancholy experience in affairs which I have had. I am a pensioner of the Crown, and I eat the bread of the public, which has a full right to demand all that in the retreat provided for me it is possible for me to perform. God give you success, and

believe me ever, with the most sincere sentiments of respect and affection,

"My dear Lord,
"Your Lordship's most faithful and obliged humble servant,
"EDM. BURKE.

"Beaconsfield, Nov. 2. 1794." *

Mr. Burke in another letter to Lord Loughborough gives an account of his vain efforts as a peace-maker: —

"MY DEAR LORD,

"I have written to Mr. Dundas thanking him for his obliging permission to wait upon him, but as he expresses himself with so little hope of any reconciliation, I shall forbear to trouble him till things wear a better aspect than they do at present. What you mention of the conversation at Court, confirms me more strongly in the idea of not seeing him until he desires it. He knows that I am ready to attend him, — and, if he really wishes that we may confer on the matter he will tell me so. If, notwithstanding the conversation with the D. of P. with which Pitt seemed so fully satisfied, his jealousies and apprehensions are, from some representation or other, grown more violent than ever, what can I say to remove them? I am so far from having any authority from the parties to disclaim any such intentions as are attributed to them, that I have never spoken with the D. of P., nor very lately with Lord F.; so that if Pitt gives credit to his informant, I know not what to say. For my part, I don't believe a syllable of the matter, but that the whole is an absolute invention of somebody to render this misunderstanding incurable. Why in the name God don't they meet together, and know what their mutual intentions are? When I can say or do any thing with authority, I shall certainly do it. In the mean time I shall see your Lordship at your desire, and am ever, my dear Lord,

"Yrs. most truly,
"EDM. BURKE.

"Nov. 8., one o'clock, A. M." †

Dec. 30. 1794.

In spite of these inauspicious appearances, the breach between the opposite parties was adjusted for the present, and at the commencement of the new session "the necessity for a vigorous prosecution of the war" was, at the suggestion of

* Rossl. MSS.

† Ibid.

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the Chancellor, announced in the King's speech, in such terms as fully satisfied Mr. Burke and his followers.

A.D. 1795. Nov. 11.

The next coercive measure brought forward was a "Bill to put down Seditious Practices." When it was in committee the Duke of Leeds having moved an amendment, that after the words, "to overturn the established Constitution," there should be added, "consisting of King, Lords, and Commons," the Chancellor said, "the amendment would legalise all libels on the Constitution which affected to preserve a King, a House of Lords, and a House of Commons. For instance, a person might write thus: 'The Constitution of England consists of King, Lords, and Commons. But I do not like an hereditary monarchy, for it is an absurdity. I think an hereditary House of Lords still worse; and the House of Commons, as at present chosen, is a nuisance. I would have an elective Monarchy, a Peerage for life or for a Session of Parliament, and a House of Commons returned by universal suffrage.' Here you have a man admitting a constitution, consisting of 'King, Lords, and Commons' and proposing a Revolutionary Government.' "* The enactments of the bill were so arbitrary, that Lord Thurlow thought this a good opportunity of displaying his patriotism by opposing it; but it passed by great majorities.

Dec. 9. 1795. Seditious Meetings Bill.

The finish was given to the new penal political code, by the "Seditious Meetings Bill," — which forbade the King's subjects to meet together in public for any purpose without the licence of a magistrate. Lord Thurlow having furiously opposed it as entirely inconsistent with a free government, and unsuitable to our national character †, it was defended by Lord Loughborough, who did not venture to taunt his antagonist with inconsistency, but said, "The noble and learned lord has contended that the genius and character of the two nations are dissimilar, and that it is absurd to suppose they can both be governed by the same laws. Upon that principle he has refused to take a salutary warning by the dreadful scenes which have passed among our neighbours. Is man so different from man, on the opposite sides of a narrow strait,

* 32 Parl. Hist. 255.

† *Anté*, Vol. V. p. 615.

that similar associations in each — assuming the same forms and affecting the same tone — are not likely to be attended with similar effects? Will the Protestant divines of England declare that they apprehend nothing from the avowed atheism and scandalous profaneness now disgracing France? Do prudent politicians see no danger in the general confusion which must necessarily result from the propagation of doctrines and systems of government destructive of all order, all subordination, all property, all security, and all happiness? Will the noble and learned lord venture to assert that we ought to remain supine in the midst of inflammatory and seditious harangues, and libellous and treasonable pamphlets and newspapers? It has ever been the practice of wise governments to anticipate by preventive regulations, in order to ward off impending evil. The libels circulated by the Corresponding Society represent our Monarchy as despotic; the House of Lords as useless; and the Commons corrupt. When the demagogues are asked what they mean by *reform*, and are called upon to produce their plans, they talk of 'universal suffrage and indefeasible elective rights, which cannot be bartered away.' In order to reform, they say, 'you must destroy boroughs and corporations, and divide the whole kingdom into sections.' Does not all this involve us in the miserable state of France? The existing laws are insufficient, and all that we propose necessity demands." *

Spies and Informers. State prosecutions.

But worse proceedings were going on than loading the statute book with such enactments, — which might have remained *brutum fulmen* till swept away in better times. Spies and informers employed by the Government not only pretended to give information respecting political associations, but invaded the sacred privacy of domestic life. In consequence "State trials" took place both in Scotland and in England, upon which we now look back with shame.

Muir's trial in Scotland.

The prosecution of Muir for sedition, before the Court of Justiciary in Edinburgh, was probably suggested, and was

* The Reform Bill, which was passed in 1832, would have appeared to Lord Loughborough hardly less unconstitutional and pernicious.

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certainly vindicated, by Lord Loughborough and the Government. This "Martyr" was a young advocate at the Scotch bar, of good family, of high literary attainments, of promising talents, and of unblemished honour. The witnesses called against him by the Crown admitted that he was attached to our monarchial form of government, and that he always inculcated obedience to the laws. But he was (as Mr. Pitt had been) a warm friend to parliamentary reform; and he continued to *agitate* for it at a time when, in the eyes of some of its former supporters, it had become as odious as rebellion. He took the lead in proposing resolutions and petitions in favour of the measure in clubs and at public meetings—using language which in the years 1831 and 1832 would have been considered tame and conservative. The charge that he had distributed seditious writings was supported by evidence that a copy of Paine's Rights of Man was found in his great-coat pocket. The presiding Judge (according to the power then vested in him) selected a jury, all of whom belonged to an Association that had pronounced a strong opinion against parliamentary reform, and one of whom voluntarily declared his unfitness to serve as he held an office under Government. I must do the Lord Advocate of that day (Dundas) the justice to observe, that he seems to have been most heartily ashamed of the task imposed upon him; and in his short and feeble speech he hardly ventured to contend that a case had been made out for a conviction. Mr. Muir defended himself with force, eloquence, and decency, thus concluding: "What, then, has been my crime?—having dared to be, according to the measure of my feeble abilities, a strenuous advocate for an equal representation of the people in the House of the people—having dared to attempt to accomplish by legal means a measure which I conscientiously think will diminish the weight of their taxation, and put an end to the profusion of their blood. From my infancy to this moment I have devoted myself to the cause of the people. It is a good cause, and it will ultimately triumph. If I am to be found guilty, say then that you condemn me only for my attachment to this

His defence.

cause, and not for those vain and wretched pretexts stated in the indictment, intended merely to colour and disguise the real motives which have led to my accusation. I may be doomed to languish in the recesses of a dungeon — I may be doomed to ascend the scaffold; — but nothing can deprive me of the recollection of the past — nothing can destroy my inward peace of mind arising from the consciousness of having done my duty." The Lord Justice Clerk Braxfield summed up violently against him, and hardly attempted to conceal that the *corpus delicti* was the advocacy of parliamentary reform. Censuring the getting up of a petition on the subject to the Lords and Commons, he said, "Mr. Muir might have known that no attention would be paid to such a rabble. What right have they to representation? He might have told them that the Parliament would never listen to their petition. How could they think of it? A government in every country should be just like a corporation; and in this country it is made up of the landed interest, which alone has a right to be represented. As for the rabble, who have nothing but personal property, what hold has the nation of them? What security for the payment of their taxes? They may pack up all their property on their backs, and leave the country in the twinkling of an eye; but landed property cannot be removed." The jury (as had been anticipated when they were sworn) unanimously found the defendant guilty, and the Court sentenced him to be transported beyond the seas for fourteen years, — taking great credit for their humanity in not having pronounced sentence that he should be hanged or exposed to wild beasts — punishments which for such an offence they claimed the power to inflict — saying, "By the Roman law, which is held to be our common law, where there is no statute, the punishment was various, and transportation was among the mildest mentioned. Paulus, 38. Dig., 'de Pœnis,' writes, 'Actores seditionis et tumultûs, populo concitato, pro qualitate dignitatis, *aut in furcum tolluntur, aut bestiis objiciuntur.*' We have chosen the mildest of these punishments. Baldus writes,

Summing up of Lord Chief Justice Clerk Braxfield.

Sentence of transportation for advocating parliamentary reform.

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'Provocans tumultum et clamorem in populo, *debet mori* pœnâ seditionis.' " *

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Lord Loughborough justifies these proceedings.

The case excited a great sensation in England, and was immediately brought before the House of Lords by Earl Stanhope, who pointed out the emormity of the whole proceeding, and moved an address to the Crown, praying that the execution of the sentence might be postponed. *Lord Loughborough.*—"Granting that there has been a mis-trial—that the verdict of the jury is not justified by the evidence—that the conduct of the Judges has been founded in misapprehension—that there has been a misapplication of the law—in short, if there has been any irregularity in the trial or the sentence, there is a remedy provided by an application to the Crown to bring the whole matter into a revision. But who ever heard of an application to this House to pray his Majesty to postpone the execution of a sentence? If ever your Lordships should think fit to entertain an inquiry into the case, I pledge myself that you will find the conduct of the Judges in Scotland to have been altogether such as your Lordships would desire to find in men intrusted with functions so important." Such an impression was produced by these observations, that when the division came, Lord Stanhope went below the bar all alone. †

Accordingly Mr. Muir, along with the Rev. Thomas Fyshe Palmer, a clergyman of the Church of England, sentenced to transportation by the Court of Justiciary in Scotland under circumstances hardly less atrocious, having been shipped off for Botany Bay among burglars and persons guilty of the most horrible crimes,—the Earl of Lauderdale, after a very able speech, explaining the mockery of justice which had been exhibited on their trials, moved that there should be laid before the House of Lords copies of the indictments against them, with the minutes of the Court respecting the challenge of jurors, and the subsequent proceedings till final sentence. But Lord Loughborough boldly defended all that had been done; and, not satisfied with ne-

* 23 St. Tr. 118—258.

† Content, 1; Not-contents, 49. 30 Parl. Hist. 1302.

gativing Lord Lauderdale's motion, — carried, without a division, a counter resolution of his own, "That there is no ground for interfering in the practice of the established Courts of Criminal Justice as administered under the Constitution by which the rights, liberties, and properties of all ranks of subjects are protected." *

Prosecution of John Frost for words spoken in conversation in a coffee-house.

Meanwhile there were political prosecutions going on in England still more alarming to liberty, although they were conducted with greater respect for the forms of law. Mr. John Frost, an attorney of eminence, under the influence of wine, and provoked by impertinent questions put to him after dinner in a coffee-house, having foolishly said, "I am for equality, and no King," was, with the entire approbation of the Lord Chancellor, prosecuted by the Attorney General, and sentenced to be imprisoned six months in Newgate, to stand one hour in the pillory at Charing Cross, and to be struck off the roll of attorneys, — whereby he was ruined for life.†

Prosecutions for sedition at Quarter Sessions.

The country magistrates naturally followed such a precedent, and similar prosecutions were multiplied at Quarter Sessions. A complaint was made to the Chancellor of a sentence in Kent of a twelvemonth's imprisonment on a loyal yeoman who, in his drink, being rudely assaulted by a constable as drunk as himself, and ordered by him to keep the peace in the King's name, stammered out, "D——n you and the King too;"— but his Lordship said, that "to save the country from revolution, the authority of all tribunals, high and low, must be upheld;" and he refused to interfere. The violence of the times is more thoroughly illustrated by the consideration that he was by nature a mild man, — and that at no former period of his life had he shown the slightest inclination to overstrain the criminal law.

Resolution to bring the leading reformers to the block.

But having begun in this course, and finding from the revolutionary panic which had seized men's minds, that for the time it was rather popular, and strengthened the Government, he boldly advanced in it, and soon nothing less would

* 31 Parl. Hist. 284.

† 22 St. Tr. 471—522. See a statement of this case in the Life of Erskine.

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satisfy him than having the heads of John Horne Tooke and the leading Reformers stuck on Temple Bar.

I must reserve for the Life of Erskine a full account of the famous Treason Trials which took place in the end of the year 1794, — covering him with glory, and the prosecutors with disgrace, — and I can now only briefly notice the circumstance that Lord Loughborough was a principal adviser of them. He had surrendered himself to the wildest apprehensions of Burke; he feared that any encouragement of parliamentary reform was tantamount to revolution; and he believed that general bloodshed would be saved by the sacrifice of a few individuals. The reflection rejoiced him, that on this occasion *he* was not liable to the taunt of being a renegade, for during *his* patriotic days he had only to inveigh against the injustice done to the electors of Middlesex, — and the plan of reforming the representation of the people had not been seriously brought forward. Perhaps he was not very sorry to think that the Prime Minister must wince while his own withers were unwrung; for there was an increasing alienation between the *original* and the *conscript* members of the Cabinet,—Pitt confining his confidence more and more to Henry Dundas and Lord Grenville; and the disciples of Burke condemning his conduct of the war, lamenting his want of spirit, and talking among themselves of another chief.

Awkward predicament of Mr. Pitt.

When the plan was first proposed of arresting the members of the Corresponding Society, and proceeding capitally against them, it is said that Pitt, who had studied the law, expressed some disapprobation of the notion of "constructive treason," but he did not like to rely upon the objection that the Duke of Richmond and himself had supported similar doctrines, and no doubt in his heart he believed that under the pretence of parliamentary reform deeper designs were now carried on. The Attorney and Solicitor General, being consulted by the Chancellor, gave an opinion that the imputed conspiracy to change the form of government was a compassing of the King's death within the meaning of the statute of Edward III., — and the King himself, upon this opinion, was eager for the prosecutions. So in an evil hour

an order was made that they should be instituted, and warrants were signed for the arrest of the supposed traitors.

George III.'s speech to Lord Loughborough on the acquittal of Hardy, Horne Tooke, &c.

The result is well known. To the credit of George III., when the whole subject was understood by him, he rejoiced in the acquittals, and laying all the blame on the Chancellor, he said, "You have got us into the wrong box, my Lord, you have got us into the wrong box. Constructive treason won't do, my Lord, constructive treason won't do."

Conclusion of the trial of Warren Hastings.

The long pending trial of Warren Hastings now approached its conclusion, under the presidency of Lord Loughborough, who, notwithstanding his opinion of the truth of most of the charges, conducted himself with impartiality as well as dignity. The interest of the proceeding had greatly declined, and the public sympathy was all with the accused. Mr. Burke, however, was still unrelenting, and when the evidence and the speeches had closed, — in the fervour of his zeal, he wrote the following letter to the Chancellor, — overlooking the impropriety of a prosecutor privately seeking to influence a judge: —

Letter of Mr. Burke to Lord Loughborough, respecting Hastings's case.

"My dear Lord,

"It would be shameful, after the long toil of both Houses, and the enormous expense of the public, that the trial of Indian peculation and oppression should have an unjust, or a lame and impotent conclusion. Sequestered as I am from the public, I should be infinitely concerned that such a thing should fall out at any time, but particularly at a time when you presided in the House of Peers. I should be equally sorry to have my poor remains of life employed in justifying the last fourteen years of it by preparing a stable record of their proceeding in every part of Europe, necessarily concluding to the perpetual infamy of a body which, God knows, I wish to be held in perpetual honour, I mean the House of Lords. This affair, in my opinion, ought to be adjourned over until some person can be found to state the several prominent parts — namely, the leading facts, and then the criminal inferences, and lastly, the matters of aggravation or extenuation as they appear in the evidence. This thing cannot be left to the known partisans of the delinquent — amongst the most desperate of whom I must reckon (between ourselves) your clerk, Mr. Cowper. He is likely to make the worst *rapporteur* that can be found. We are preparing a syllabus, which will be printed for the use of such Lords

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as wish to know what case we would be thought to have made out. Excuse this trouble from one of your sincere wellwishers.

"I am ever, with the most sincere respect and regard,

"My dear Lord,

"Your Lordship's most faithful and obliged humble serv^{t}.

"Edm. Burke.

"Beaconsfield, Jan. 10. 1795."

I am not aware what answer was returned, but I presume it must have been a mild refusal to listen to the proposal, as the Chancellor was bound to take no part in the proceedings except judicially.

April, 1795.

During the long-continued discussions among the Peers themselves on the merits of the case, he was engaged in several sharp contests with Thurlow, who still eagerly advocated the cause of the defendant. When the verdict was to be given, he said "Guilty" on all the sixteen charges except three; but of the Peers who voted—reduced by casualties since the commencement of the prosecution to twenty-nine — there being on every charge a large majority who said "Not guilty," he had the task, which he performed very courteously, of announcing to Mr. Hastings that he was acquitted of the crimes and misdemeanours whereof he had been impeached.

He afterwards received the following very interesting letter from Mr. Burke, beginning with an allusion to the attack on the writer by the Duke of Bedford, which led to one of the finest effusions of genius, — and concluding with a bitter protest against the resolution, that all the expenses of the prosecution on both sides should be paid by the public: —

Another letter from Mr. Burke to Lord Loughborough.

"My dear Lord,

"I am, now the thing is over, to thank you for the handsome part you took in the first attack on me. It may appear odd, but the fact is, that until the speech was sent to me, under a cover, by post that came in on Saturday, I had never seen an account of the kind things you were pleased to say of me. It will appear odd, but it is true, that I never read the attacks made on me by the D. of Bedford and Lord Lauderdale, but had them merely from a verbal, but I think a faithful and an exact, relator, who told me of them, and of Lord Grenville's defence of me. I trust I am not

disposed to be ungrateful, and I should certainly have paid your Lordship the share of the compliment I owed you, if I had known how much I was indebted to you for what I have ever thought, and shall think, a great honour and consolation to me—your acknowledging your long-continued partial opinion of me. The newspapers, and all the matter they contain, have been long hateful to me. I pass months without looking into one of them, and I faithfully assure you, that until Clairfait's victories, I was a long time indeed without casting my eyes on a paper. I only knew what was going on by conversation, from which I could not disengage myself.

"The regard I set on your good opinion will not permit me to let you imagine for a moment that I am insensible to the blow which is attempted at my reputation, and at a reputation of infinitely more moment than mine. Mr. Hastings is publicly rewarded for the crimes which your Lordship knows have been *proved* against him at the bar of the House of Lords. The House of Commons, for the first time that this infamy has happened to them, are condemned in costs and damages. It is the first time that any *public* prosecutor has been so condemned. Robbery so rewarded by new robbery. Oh no! It shall never be said, never, never, that the cause of the people of India, taken up for twenty years in Parliament, has been compromised by pensions to the accused and the accursed. The blood of that people shall not be on my head. The example of such a desertion of a cause, and prevarication in justice, is a dreadful example. I shall, I hope, by the end of the week, petition the House of Commons. Excuse this trouble. Your goodness to me entitles you to a communication of every material step I take in life. I confess I never expected this blow. As to the acquittal, that it was total I was surprised at—that it should be so in a good measure, I expected from the incredible corruption of the time.*

"I have the honour to be, with the most respectful affection,

"My dear Lord,

"Your most faithful and obliged humble servant,

"EDM. BURKE.

"Beaconsfield, March 7. 1796."†

* So earnest was Mr. Burke on this subject, that he likewise sent the following letter to the Duke of Portland: —

Letter from Burke

"My dear Lord,

"I little expected that under an Administration, in which your Grace had a

† Rossl. MSS.

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But, notwithstanding Burke's dying efforts, the resolution respecting costs, of which he complained so bitterly, remained unaltered, and he is now generally supposed to have displayed a want of sound judgment and good feeling in the whole course of that prosecution, on which he chiefly relied for a great reputation with posterity.

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to Duke of Portland respecting the costs of Hastings's trial.

part, the House of Commons should be condemned in damages to an immense amount to Mr. Hastings. We charged him with a robbery of the people of India — we reward him by a robbery of the same people. Your poor old friend does not choose to be actively or passively a party in this nefarious act of peculation; I therefore propose, as my dying act, and I should have no objection to perish in that act at the bar of the House of Commons, to petition against this robbery of India, and treachery to those employed to prosecute. I only think it right to give your Grace this notice. This poor scroll requires no answer.

"I have the honour to be, with the highest respect and affection,
"My dear Lord,
"Your Grace's most faithful and obedient humble servant,
"Edm. Burke."[1]

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[1] Rossl. MSS.

CHAPTER CLXXIII.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL THE COMMENCEMENT OF THE INTRIGUES WHICH ENDED IN HIS RESIGNATION AND THE DISSOLUTION OF MR PITT'S ADMINISTRATION.

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Lord Loughborough opposes a general arming of the people.

MR. HASTINGS's acquittal was soon forgotten by the public, amidst the stirring events of the war which now raged with such violence. There being an alarm of invasion, a proposal was made to arm the people in mass; but this was strongly opposed by the Chancellor, who contended that arms should never be permitted to any, except under the direction of men of property; and that the conduct of the "National Guard in France" should be a warning to us to intrust our defence exclusively to the King's regular army.*

The opposition, in the upper House, was now almost entirely confined to Lord Stanhope;—and, to silence him, the Lord Chancellor put his resolutions from the woolsack without reading them, and when they were negatived, had them expunged from the Journals.†

June 27. 1795.

The Whigs made a rally to support the Duke of Bedford's motion for peace with France; but the Chancellor said that "it was not fit to be put on the Journals;" and a counter-resolution, moved by Lord Grenville, for a vigorous prosecution of the war, was carried by a majority of 88 to 15.

Coolness between Lord Loughborough and the Prince of Wales.

There was now a great coolness between Lord Loughborough and the Prince of Wales. His Royal Highness had been for a short time an "*alarmist,*" but he ever hated Pitt—and he again associated familiarly with Fox and Sheridan—regarding him who was to have been his Chancellor under the Regency as little better than an apostate,—a character for which, till he actually was Regent, he expressed great contempt. The wary Scot was uneasy at this state of affairs; for there were from time to time symptoms indicating that

* 31 Parl. Hist. 135. † Ib. 149.

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the Regency question might be speedily renewed; and, at any rate, he disliked the notion of encountering the frowns of the Sovereign in a new reign. He was therefore anxious to soothe the heir apparent, and he thought he had an opportunity of doing so in supporting the bill for granting an annuity to his Royal Highness, and for preventing him from *assigning* or *charging* it. In this courtly strain did he answer certain objections of Thurlow, who had become a great favourite at Carlton House, and was by no means without hope of resuming the Great Seal: "The restrictions complained of by the noble and learned Lord, so far from being insulting to his Royal Highness, testify the profoundest respect for his feelings, as well as his dignity. The reason for the extraordinary circumspection complained of, is because a deeper interest is taken in the conduct of princes than of private individuals. If they outrun their fortune, their ruin is seen by the public with cold indifference; but all sympathise with the imprudence of a Prince. He is constantly tempted to expense without habits of economy. Even his virtues here are against him. His taste, his love of the arts, his liberality, his munificence—all lead to expense. In fact, he is educated to expense in every possible shape, and is often reduced to the option of acting with imprudence and extravagance, or appearing mean and narrow-minded.. The latter imputation the nation would never wish to see cast upon an English prince. They neither expect nor desire that he should count over pounds, shillings, and pence with the minuteness of a petty tradesman. The restrictions are intended not to wound the honour of the Prince of Wales, but to shield him in future from the perils to which men of his exalted rank are exposed. They are, properly speaking, restrictions not on his Royal Highness, but on those about him—to restrain the hand of extravagance, and to guard against profusion."— Lord Loughborough, finding that the Prince of Wales was not in any degree appeased by this flattery, never afterwards attempted a reconciliation with him, but leaving him under the undisputed sway of Thurlow, during all the subsequent disputes which disturbed the

Lord Loughborough's speech to soothe him.

Lord Loughborough takes a decided part with the King against the Prince.

royal family, he in a very decided manner took the opposite side. Ever striving to gain the personal favour of George III., he openly enlisted himelf in the band of the "King's friends" — which still subsisted, though much diminished in influence, by the lofty ascendency of Pitt.

It is curious to observe, from the following note, the terms of distant civility on which he now was with the Chief under whose banner he had some years gallantly fought: —

Note from Mr. Fox to Lord Loughborough.

"Mr. Fox presents his compliments to the Lord Chancellor, and as a meeting of his constituents is to assemble to-morrow in Westminster Hall, for the purpose of petitioning Parliament, takes the liberty of submitting to his Lordship that it would be a great accommodation to the meeting, and a civility for which the gentlemen who mean to attend it would be much obliged to his Lordship, if the Court of Chancery could, without injury to public business or inconvenience to his Lordship, be adjourned at an early hour.

"South Street, 15th Nov. 1795." *

Re-grant of the barony of Loughborough.

In fulfilment of a promise made to Lord Loughborough, when he led over the "alarmists" to Mr. Pitt, he received a re-grant of his barony of Loughborough, with a remainder to his nephew, Sir James St. Clair Erskine. On this occasion, he had, for some reason that I am not aware of, consulted the Earl of Moira, and he received from him the following congratulation: —

"Donington, Oct. 7th, 1795.

"MY DEAR LORD,

"The letter with which you have honoured me claims acknowledgments that, as I trust you will believe, are not merely matter of form. The delicacy of your hesitation respecting the extension of your present title, so very different from the fashionable tone of the day, is a particular and most kind compliment to me. You will feel that, esteeming it such, I could not repay it otherwise than by meeting it with entire frankness: so that you will give full trust to my answer. With the interest which I must take in

* The inconvenience of such political meetings while the Courts were sitting was found to be so great, that afterwards an act was very properly passed forbidding the holding of them in the vicinity of Westminster Hall.

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the credit of the title of Loughborough, I should grieve that you transmitted any other to your family. The further destination of your honours is an event that in itself gives me unfeigned gratification. But I assure you I shall have additional satisfaction if the continuance of the title of Loughborough may be supposed to imply any reciprocation of regard between us. The respect which my uncle bore to you was inherited by me, and has never been shaken by any diversity of public opinion. I always flattered myself that I possessed your friendship. I feel it very sensibly in the present instance, and I only wish that my acquiescence, in a case where certainly you were perfect master to make the decision without reference to me, could have any pretension to being considered as a testimony of esteem.

"The matter shall not be mentioned by me. But in the mean time I beg you to accept my sincerest congratulations on a circumstance which must justly afford you peculiar pleasure.

"I have the honour to be, my dear Lord, with high esteem, your Lordship's very faithful and obedient servant,

"MOIRA.*

"Lord Loughborough, &c. &c. &c." †

* The following are letters written by the Duke of Portland to Lord Loughborough respecting the new grant of his peerage:

"Tuesday evening, 6th Oct. 1795.

"My dear Lord,—I have great pleasure in assuring you that I am not aware of any circumstance which should retard the manifestation of the King's sense of your services, and that I shall be very happy in receiving his commands to carry his intentions into effect. I did not receive your letter (though dated on Friday) till yesterday. Had it reached me in its due course I must have disobeyed your orders, for I could not have deferred till Wednesday my thanks for your attention to my assurances of the part I take in an event which must so naturally and so justly contribute to your satisfaction. I am very sincerely,

"My dear Lord,

"Your most faithful and obedient, &c.,

PORTLAND."

"Oct. 14. 1795.

"My dear Lord,—After what you have heard from the King upon the subject of your patent, it would be very unnecessary to inform you of the very gracious manner in which he not only assented to but approved of the insertion of Mr. Erskine's name. . . . His wish was, that it should be made in the manner most agreeable to yourself. . . . I was not at the levee, but I was for half an hour in the closet; and have the satisfaction of informing you that I perceived little, if any, of that agitation which was so striking on this day se'nnight; and this opinion was fully confirmed by Lord Spencer.

"I am, &c.,

"PORTLAND."

—*Rossl. MSS.* There are many other letters from the Duke of Portland to Lord Loughborough from 1782 downwards; but, generally speaking, they are jejune, confused, and almost unintelligible.

† Rossl. MSS.

The Chancellor now seldom spoke in the House of Lords, and the brilliant reputation he enjoyed as a debater in the House of Commons had much faded. Some imputed this change to a decline of mental or of physical energy, and others to the coolness between him and the Prime Minister. He took a prominent part, however, in the discussion upon the rupture of the negotiation at Paris, in the end of 1796, between Lord Malmesbury and the Directors of the French Republic. Most strenuously had he always resisted the proposals to treat with them. Like his friend, Lord Auckland, he said that "they ought to be put under the sword of the law," and he declared that it was indecent to send an ambassador to address them in the words of Antony to the assassins of Cæsar —

"Let each man render me his bloody hand."

Dec. 30. 1796. His speech on the rupture of the negotiation for peace.

He therefore greatly rejoiced that the country had escaped the perils of a "regicide peace," — and an address to the Crown being moved on the occasion, he expressed much indignation against the Earl of Guilford's amendment, which threw blame upon the Ministers for the terms they had demanded, and prayed that his Majesty should make fresh overtures to the Republican Government. "Such an amendment," said he, "was never before proposed in an English Parliament. Can any gloomy imagination suppose that it will be adopted? What effect would it produce in this country and throughout Europe? The inference would be, that Great Britain is willing to submit to whatever conditions the enemy chooses to impose. It tends to humble the nation before the Executive Directory, and to call upon them to put their feet upon our prostrate necks." He then went over the circumstances of the negotiation, to show the bad faith of the French negotiators, introduced some important statistics from the Court of Chancery to prove a decrease of bankruptcies, and an increase of investments for the benefit of the suitors, and asked "whether, after the French had barred and double-barred the door of negotiation against us, and our resources

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were still unexhausted, the House was prepared to send up this grovelling amendment to the Throne in preference to declaring, by the address originally moved, that they would not submit to a faithless and arrogant enemy?" The amendment was negatived by a majority of 86 to 8.*

It is curious to consider that at this time the advocate of the Government was very imperfectly acquainted with the real merits of his case. It appears, among other astounding disclosures in the lately published Memoirs of Lord Malmesbury, that all the Cabinet, except Pitt, Dundas, and Lord Grenville, were kept in ignorance of that ambassador's most important despatches, and that he was obliged to write one set for the whole Cabinet, and another for the triumvirs. He adds, "The Chancellor, Lord Loughborough, walked home with me from Pitt's;—he not in the whole secret, and, as usual, questioning and apparently sanguine."

Lord Loughborough's firm conduct on the stoppage of cash payments at the Bank of England. Feb. 26. 1797.

Soon afterwards, a crisis arose in which Lord Loughborough displayed the firmness and decision which in times of peril he always brought to the aid of the state. Mr. Pitt having disregarded several previous warnings, was informed on a Saturday evening, that, from foreign subsidies and unfavourable mercantile operations, such was the low state of bullion and specie at the Bank of England, and so enormously had the market price of gold risen above the Mint price, that they could pay in cash no longer. On Sunday morning the King was sent for from Windsor, and a council was called, at which he presided. Mr. Pitt proposed an order by his Majesty in Council forbidding the Bank of England to make any farther payments in cash; but grave doubts were entertained how far such an order would be constitutional, as since the Revolution of 1688 there had been no instance of the Executive Government avowedly superseding Acts of Parliament and violating the law, unless where the subsistence of the people was concerned, as in prohibiting the exportation of corn or suspending the duty upon the importation of corn during the recess of Parliament,—whereas Parliament was now sitting,

* 32 Parl. Hist. 1505.

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and the proposed order affected innumerable private contracts between man and man. Nevertheless, the Chancellor being appealed to, gave a clear opinion that for the safety of the state the Executive Government should, upon the responsibility of Ministers and in expectation of an indemnity, do any act which the legislature, if it had the opportunity, would sanction; and that as in this case the Executive Government not interfering, the opinion of Parliament could not be taken till irremediable evils would be brought upon the nation, the Executive Government was bound to interfere,—so that the proposed order, although contrary to law, would be in accordance with the Constitution. The order was accordingly issued, and on Monday morning no payments were made in Threadneedle Street except in bank notes, the directors quieting the public with a statement of their affluence and their readiness to continue all their dealings as usual,—substituting paper for gold. The same day a message from the King was brought down to both Houses, stating what had been done, and calling for the advice of Parliament. Lord Loughborough's doctrine I hold to be sound, and he could not be answerable for the necessity which required the order, nor for its consequences. He was guilty of a little deception, however, when the matter came to be discussed in the House of Lords, in saying that "it had never entered the contemplation of Ministers to substitute paper for gold by any forcible means, and that they had never thought it would be just or prudent to make bank notes a legal tender."* Bank notes were not technically made a legal tender, but if there had been a tender in bank notes, the person of the debtor was protected from legal process,—and till the resumption of cash payments in the year 1819, a paper currency was practically established in the country—by which joint operations hundreds of thousands of individuals were ruined, and hundreds of millions were added to the national debt.

Mutiny in the fleet. May 9. 1797.

Lord Loughborough deserves credit for the prudence he displayed during the alarming mutiny in the fleet. He

* 32 Parl. Hist. 1568.

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found that the seamen had real grievances to complain of, and he strongly supported the policy of concession. When the bill for increasing their pay was pending in the House of Lords, and was likely to be obstructed by long speeches, he said boldly, "Those who would enter into discussion at the present moment partake of the criminality of the mutineers. I entreat your Lordships to consider that the delay occasioned by agitating topics which may as well be postponed to a future day, may put in peril the lives of the best and bravest men in the country. This is like stopping when a conflagration is blazing, to inquire how it originated, instead of employing the engines to extinguish it. I ask a flag of truce for one night. Let the bill be passed forthwith, and sent to Portsmouth, and the country may be saved." The bill was passed forthwith, *nemine dissentiente.**

Lord Loughborough's complaints against Mr. Pitt as a war minister.

The Chancellor still highly disapproved of the manner in which the war was conducted, and from time to time wrote long letters to Mr. Dundas, who was considered the war minister, as to the inexpediency of surrendering Toulon, and neglecting all concert in acting with the allies whom we subsidised. One of these he concludes by observing, "The *desideratum* is a person who, like the Duke of Marlborough in the time of the Grand Alliance, could settle at the Hague, Berlin, and Vienna, and all the lesser Courts (having an inspection also over the negotiations with St. Petersburgh), the plan of a campaign. What substitute can be found for an agency of equal force, I certainly cannot tell; but without it I fear much our efforts will be very defective." †

Lord Loughborough's attack on the Duke of Bedford. May 30. 1797.

The Duke of Bedford having moved an address to his Majesty, to dismiss his Ministers for misconduct, Lord Loughborough spoke, but did not attempt any general defence of Mr. Pitt's war policy. He confined himself to reprobating the measure of parliamentary reform, and particularly the disfranchisement of the rotten boroughs, which had been recommended as the means of reconciling the

* 33 Parl. Hist. 491. † Rossl. MSS.

people to the Constitution. "The noble Duke's plan," said he, "is wilder than universal suffrage; he would despoil corporations of their privileges, and assist the House of Commons in uncreating their creators; he would overwhelm freeholders by 'pot-boilers;' he would cut up by the roots whatever belongs to franchise, property, or privilege, and introduce in its stead the principle of an agrarian law. The noble Duke says, 'the existing voters will not be injured by an extension of the franchise, because they will still be allowed to vote;' but will he be contented to see hundreds of 'pot-boilers' called in to share his estate, if he is still allowed rations for the subsistence of himself and his family? I would advise the noble Duke to remember, that in France, those who were first in revolutionising the country were the earliest victims of the fatal doctrines which they propagated." * On this occasion the Opposition mustered 12 to 91.†

Lord Loughborough's demeanour at this time to his opponents.

So greatly was the Chancellor elated by the prostrate condition of his opponents, that he now treated them at times with contumely,—designating a motion of Lord Guilford as "the thing which he held in his hand, too contemptible to put;" and lamenting a speech, in which the eccentric Earl Stanhope had called himself "Citizen Stanhope," as "an awful visitation of God."

Nov. 8. 1797. He delivers the thanks of the House of Lords to Viscount Duncan for the battle of Camperdown.

However, he appeared to great advantage in returning thanks to the winner of the battle of Camperdown, whom he thus addressed: "Lord Viscount Duncan,—I am commanded by the Lords to give your Lordship the thanks of this House for your able and gallant conduct in the brilliant and decisive victory obtained over the Dutch fleet on the 11th day of October last; as well as for the zeal, courage, and perseverance which you have uniformly manifested during the arduous period in which you have commanded his Majesty's fleet in the North Sea.

* 33 Parl. Hist. 764.

† If one hackney coach would not have contained all the Whig Peers at this time, an omnibus would have been quite sufficient. — See Mr. Byng's Account of the House of Commons, *antè*, Vol. V. p. 614.

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"At the same time that this vote passed unanimously, their Lordships were pleased to order, that all the Peers should be summoned to attend the House on the occasion: a distinction unprecedented, but called for by the general admiration your conduct has inspired, and strongly expressive of that peculiar satisfaction which the Peers must feel upon your Lordship's promotion to a distinguished seat in this House.

"Splendid in all its circumstances as the victory obtained by his Majesty's fleet under your command has been, important as it must prove in its consequences to the security of all his Majesty's dominions, and, under the Divine blessing, to the favourable issue of the arduous contest in which they are engaged; the magnitude and lustre of these considerations have not so occupied the observation of the Lords as to make them unmindful of the constant vigilance with which your Lordship had, in the whole course of your command for three successive seasons, watched and frustrated every design of the enemy; nor the manly fortitude with which you had sustained the temporary defection of the greater part of your force; nor, above all, that undaunted resolution with which, at so momentous a crisis, you proceeded to check and to control the presumptuous hopes of the enemy.

"These are merits in which fortune can claim no share; they spring from that energy of mind and that ardent love of your country which has directed your own conduct, and animated the officers and men under your command, to those exertions which are entitled to every testimony of public gratitude and applause." *

1797. Illness of Lord Loughborough.

In the spring of this year the Chancellor had a very serious illness, which caused much anxiety to his friends. Soon after his recovery he received the following letter from Mr. Burke, which has a melancholy interest, as the last which was written to him by this great man, who had been so long, by turns, his foe and his friend.

* 33 Parl. Hist. 978.

"Bath, 1st May, 1797.

"MY DEAR LORD,

Last lettter from Mr. Burke to Lord Loughborough.

"Though not much concerned, nor likely to be long concerned, about any thing on this side the grave, I felt a sincere pleasure on your Lordship's recovery; and do trust and hope, from the energy of your Lordship's character, that you will act your part in a total change of the plan of passive defence, so ruinous in point of charge, and not only so inefficient, but in every point of view so highly dangerous to all things except our enemies abroad and at home. I know it will require the greatest resolution and perseverance to make the necessary change in this unfortunate plan; but if it be not done you are all ruined, and all of us along with you. Pardon this friendly liberty at the time when others take so many liberties that are far from friendly. This, though infinitely of greater importance, is not the subject on which I wish just now to trouble your Lordship. It is relative to a little affair that I mentioned to you about five months ago, and which it is no wonder your serious illness and important occupations have put out of your head. I mean that of two worthy persons that are as nearly as possible at the point of dying from actual famine: the first is that character, not so respectable for his rank and family, which are amongst the highest, as for perfect piety and unbounded charity, the Archbishop of Paris: the other is not inferior to him, in my humble opinion, in virtue and religion, nor in charity neither, according to his more limited means, which, to my knowledge, he particularly extended to distressed English residents at Amiens. The revenue of his bishopric was 2400*l.* sterling a year, of which he received but 400*l.* to support himself and his dignity in the Church, and he contributed every penny of the rest in charity. He is now in Germany, in a state of the greatest indigence. His name is Machault, son of Machault formerly Minister of the Marine, and who, I believe, is now living in an extreme old age, and thoroughly pillaged by this glorious revolution. Now I ask nothing but that these two should be each put on such allowance as French bishops here receive, and that it should be a quarter antedated for their present necessities. If your Lordship will permit my friend Dr. King, whose hand supplies the infirmity of mine, to manage this affair, he will do it to your Lordship's and Mr. Pitt's satisfaction, and with all possible attention to the fallen dignity of the eminent persons to be relieved; and it is for this reason that I wish the affair to be managed by him only.

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"You will not think a solicitation so worthy of humanity to be unworthy of you. God direct you at this arduous moment. Believe me, my dear Lord, with sincere respect and affection, your friend of thirty-five years' standing, and always your most obedient and obliged humble servant,

"EDM. BURKE."*

Lord Loughborough immediately represented the cases to the Government, and in the mean time, with his usual liberality, ministered to the necessities of these meritorious individuals from his own funds.

Differences between the Prince and Princess of Wales.

In the year 1797 much of his time was occupied with the differences between the Prince and Princess of Wales; and he carried on a long negotiation on the subject with Lord Thurlow, Lord Cholmondely, and Lord Moira. A sentence in a letter to him from the last-mentioned nobleman may convey a notion of the task imposed upon them: "I am persuaded the Princess is flattered with the prospect of living apart from the Prince, and having the free disposal of a large income. She thence, evidently to me, wishes to avoid reconciliation, if she can do it without betraying her view. The Prince, on his part, would give his right hand for a decent excuse to force matters to a separation. Judge of the toil of endeavouring to bring two persons together with such sentiments. It must be tried, however." I have before me a lengthened correspondence between the negotiators†; but the subject is not at all instructive, and its interest has passed away.

Lord Loughborough had about the same time a difficult negotiation to conduct between Prince Edward, about to be created Duke of Kent, and Mr. Pitt, who seems to have been disposed to treat him with great rigour in the formation of his establishment. His Royal Highness thus acknowledges the good offices of the Chancellor:

"St. James's Street, 13th Feb. 1799.

"MY LORD,

Letter of Prince

"I had intended doing myself the pleasure of calling upon your

* Rossl. MSS. † Ibid.

Edward to Lord Loughborough.

Lordship this morning to thank you for the very friendly and polite manner in which you were so good as to speak of me to the Duke of Clarence, as also for the extreme readiness you showed in undertaking to speak to Mr. Pitt on some subjects relative to myself, which I understand from my brother he mentioned to you."

[His Royal Highness then enters very minutely into all his affairs, and thus very gracefully concludes:]

"Having now laid all these matters candidly before your Lordship in the manner I feel them, I have only to solicit the continuance of your good offices and friendship, so far as you may think I have a right to those comforts and indulgences which I am solicitous to obtain. I trust my conduct throughout life will never disgrace the good opinion you have so kindly formed of me, and that you will never have reason to repent having befriended him who has the honour to subscribe himself, with sentiments of the highest regard,

"My Lord,
"Your Lordship's most devoted and
"obedient humble Servant,
"EDWARD." *

Lord Loughborough's refusal to allow his letters to be published.

Our Lord Chancellor now received a great alarm by the announcement of a publication which was to treat of rather a tender subject — his coalition with Mr. Pitt. Dr. French Lawrence, to whom all Mr. Burke's papers were bequeathed, wrote to him to say he was about to print a letter from Mr. Burke to Lord Fitzwilliam, giving an account of the manner in which the "alarmists" had offered to support the Government, and of a dinner at Lord Loughborough's in November, 1792, where they had assembled and laid down their plan of operations — inclosing a copy of the passages of the letter in which Lord Loughborough was mentioned, and asking if he had any objection to it? I have not found his remonstrance at full length, but the tenour of it may be gathered from the very interesting reply of Dr. Lawrence, which lies before me: —

* This letter and the others from his Royal Highness to Lord Loughborough are in the most beautiful handwriting I ever saw, bearing a striking resemblance to that of his illustrious daughter, who now fills the throne.

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"On the letter to Lord Fitzwilliam, of which I sent an extract, your Lordship has said much more than would have been sufficient to satisfy my mind. You and Mr. Anstruther, it seems, differ very essentially from Mr. Burke in your impression of the conversation that passed at your house. That was enough immediately to determine me against the publication of the letter. . . . . Permit me, however, my dear Lord, to trespass a little on your patience with regard to the principles which on this occasion you have laid down. They interest me deeply. They relate to the conscientious discharge of the sacred trust which I have undertaken — not the care of Mr. Burke's reputation (he will leave to posterity to enjoy that most glorious inheritance) — but the task of holding out to imitation the purest example of all public virute. Ill would that great end be promoted if I should do any thing even of dubious morality. It has always been my endeavour, to the best of my abilities, such as God has given me, to understand my moral duties. I have meditated still more upon them since I became a public man to the extent that I am such, and more so I do not wish to be in the present awul crisis of the country, in which, if even the grand impending danger should pass away, I see almost every symptom that has usually forerun the downfall of great states, under free constitutions. . . . . In one sense, I accord with the rule which your Lordship has laid down, 'That nothing should be given to the public by representatives which it would have been improper for the person they represent to have committed to the press.' If it be meant *morally* improper, I see no exception to the rule. But there are a thousand little personal considerations of delicacy, and even of prudence, which naturally end with the life of the man. Your Lordship thinks it contrary to morality, that 'any letters should appear which relate to intimate and familiar conversations, where, in mutual confidence, the parties concerned express to each other their sentiments and opinions on men and things.' This, my dear Lord, is a nice question, as I view it, and on the very confines of opposite duties. If it were to be taken in the full latitude which you seem to give it, I am afraid it would go to the annihilation of all history worth reading. I have never seen or heard the morality of Atticus impeached for publishing the valuable series of Cicero's letters, which could only have come directly or indirectly from him, and which, there is reason to think, must have been published while many of the persons very freely mentioned in them were still alive. Posterity has uniformly applauded the act. Perhaps those letters, for real instruction, are

worth all ancient history put together. On the other hand, if we were too literally, and without any limitation, to apply to all what Mr. Burke, in one of his letters, nobly says of himself, 'that he had no secrets with regard to the public,' much mischief would undoubtedly ensue to private society. . . . . Long and formal letters, in the nature of protests, containing deliberate opinions, or relating the substance of consultations, had among public men for the systematic guidance of their public conduct — it should seem to me, under the correction of your Lordship's better judgment, have nothing in their own nature which should make it improper to give them to the public, *if the situation of things to which they refer has actually passed away*. . . . . . The letters of which Mr. Burke kept copies, and which he spared when he burned a great number of papers, I always understood him to have preserved as a sort of historical documents. . . . . Mr. Burke was of opinion, that nothing was done at the meeting in question, that is, nothing towards bringing any number of his and your friends to act together with decision on those good principles which they actually then all held in common. Your Lordship draws a different inference, and considers it as supported by the sequel. I confess, my dear Lord, that I have ever regarded the sequel as making for him. I have ever understood (you will be so good to forgive and instruct me better if I have been wrong) that your Lordship's principal motive for consenting to take office alone, after you had twice refused it, was the impossibility of finding any steady support in doing your duty to your country out of power. My approbation, I am sensible, is of little value; but on these grounds it is that I have ever approved your acceptance of the Seals, under all the circumstances of that day, as a virtuous and manly act."

Dr. Lawrence, having thus abandoned his preliminary publication, employed himself steadily in writing a regular "Life of Burke," in which he intended to have introduced the correspondence fit to be published of that illustrious statesman, orator, and philosopher — but, to the unspeakable loss of English literature, his career was prematurely cut short before he had made much progress in this grand design.

In the ensuing year Lord Loughborough was involved in a very disagreeable controversy between the King and the Prince of Wales respecting the profits of the Duchy of Corn-

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wall during his Royal Highness's minority; — the former contending that they belonged to him as guardian in chivalry, without account, or at any rate that he had a right to set off against them the expense of the heir's education and maintenance, which would be more than the amount demanded; — the latter, that he was entitled to the whole without deduction — his education and maintenance being provided for by the public. The following letters were written by the Prince to the Chancellor on this subject: —

Difference between the King and the Prince of Wales about the profits of the Duchy of Cornwall.

"My Lord,

"Your Lordship will excuse me for troubling you again upon the subject of the Petition of Right I presented to you on the 14th day of February, 1796. The petition not having been delivered to his Majesty, and your Lordship having expressed some doubts whether it fell within your Lordship's province to present Petitions of Right to his Majesty, I find myself under the necessity of requesting your Lordship to be so good as to come to a determination on the subject, and if it shall be finally your Lordship's opinion that such petitions ought not to be presented by the Lord Chancellor, that you will please to communicate that opinion to me, and to return me the petition, that I may be enabled to present it in such manner as shall appear most proper to those whom I must consult in the business.

"I am, my Lord,

"Very sincerely yours,

"George P.

"Critchill, April 19th, 1799."

"My dear Lord,

"I have been this morning honoured by a letter from the King, accompanied by one from your Lordship; the King refers me to you for intelligence respecting his pleasure upon the present occasion. I trust you will not, however, give yourself the trouble of coming over here, as I shall be in town again in a very few days, when I will make it my business to immediately apprise you, my good Lord, of my arrival.

"I am, with great truth,

"Very sincerely yours,

"George P.

"Starbleden, near Canterbury, Aug. 30th, 1799."

"My dear Lord,

"I am most extremely concerned that you should have had the trouble of travelling so far, and after all not to have found me at home. I hope you are well persuaded, that could I have expected you, I should have taken care to have been in the way. I have been dining at Sir Charles Grey's, and am only this instant returned, when I found your note, and I shall be most happy to receive you between ten and eleven to-morrow. This day's post carried a letter from me to you, acquainting you that I had been honoured by a letter from the King, and referring me to you for his intentions and pleasure in the present business, but at the same time I requested you not to hurry yourself, as I should be again in town in the course of a day or two, when I would instantly apprise you of my arrival.

"I am, my dear Lord, ever, with great truth,
"Very sincerely yours,
"George P.

"Starbleden, Friday night, 11 o'clock p. m., Aug. 30th, 1799."

"My dear Lord,

"I arrived late last night here, and am very desirous, now that I have paid my respects to their Majesties, to have half an hour's conversation with you. Will you do me the favour of calling upon me a little before two o'clock this day, or shall I call upon you? I assure you it is a matter of no choice to me; but if you are in the least apprehensive of the badness of the weather, I shall, with the greatest readiness and pleasure, wait upon you.

"I am, my dear Lord,
"Very sincerely yours,
"George P.

"Weymouth, Sept. 17th, 1799,
half-past 12 p. m." *

The controversy was never brought to a conclusion, and I am not aware that Lord Loughborough ever gave any opinion upon it beyond the wary saying recorded in the following extract of a letter to him from Lord Thurlow:—"The Prince expressed himself much gratified with your Lordship's opinion of him, '*That he could have no wish upon a question of law, but to know what the law is.*'" †

* Rosl. MSS. † Ibid.

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Marriage of the Duke of Sussex with Lady Augusta Murray.

The Chancellor was likewise much occupied this year with negotiations in the royal family, arising out of the marriage of the Duke of Sussex with Lady Augusta Murray, and his papers contain an immense mass of correspondence on the subject. In justice to the Prince of Wales, of whom I cannot always speak so favourably, I am bound to say that he behaved on this occasion with kindness and generosity. I copy one short letter, which is creditable to both brothers.

"Berlin, Sept. 16th, 1799.

"My dear Prince of Wales,

"Having now fixed the day for Augusta's departure, I take the earliest opportunity to inform you of it. She will set out from here on the 19th of the month. I flatter myself, my dear Prince of Wales, you will protect us. Our child will be here to-morrow, and is to return back with Augusta. Being excessively unwell, I cannot at present write a long letter. Wherefore I conclude with subscribing myself,

"My dear Prince of Wales,
"Your affectionate and grateful brother,
"Augustus Frederick." *

Lord Loughborough protects Sir James Mackintosh against the Benchers of Lincoln's Inn.

I am now to relate an affair which reflects much honour on Lord Loughborough, and (I am grieved to say) very little on a learned body to which I belong. Sir James Mackintosh, struck with the defective state of legal education in England, and particularly with the gross ignorance displayed by his brethren at the bar of the principles of general jurisprudence, proposed to give a course of lectures on "the Law of Nature and Nations," and asked the Benchers of Lincoln's Inn that he might have the use of their hall as a lecture-room. These venerable men, who had reached their present dignity without being required to do more than to eat a certain number of dinners in public, and whose principal occupation now was to order, for their own table, all the choice delicacies of the season, under the name of "exceedings" † were greatly

* Rossl. MSS.

† At the Benchers' table there is supposed to be the same dinner as at the Students', and the same "commons" are actually put before them,—but with the addition of any other dishes that any bencher may fancy. A lean student having complained to a fat old bencher of the starved condition of those who dined in

shocked by this proposed innovation, and being almost all blindly furious Antijacobins, trembled at the idea of the minds of the rising generation being poisoned by the author of the "Vindiciæ Gallicæ." While they were deliberating, there appeared, as a *prospectus*, the Preliminary Discourse, of which Thomas Campbell truly and beautifully said, "If Mackintosh had published nothing else than this 'Discourse,' he would have left a perfect monument of his intellectual strength and symmetry; and even supposing that that essay had been recovered only imperfect and mutilated—if but a score of its consecutive sentences could be shown, they would bear a testimony to his genius as decided as the bust of Theseus bears to Grecian art among the Elgin marbles." But if the Benchers of Lincoln's Inn read it through, they remained untouched even by the concluding sentence: "To discover one new link of that eternal chain by which the Author of the universe has bound together the happiness and the duty of his creatures, and indissolubly fastened their interests to each other, would fill my heart with more pleasure than all the fame with which the most ingenious paradox ever crowned the most ingenious sophist." The use of Lincoln's Inn Hall as the place where the eternal chain, with its new link, might be exhibited, was still refused.*

Lord Loughborough, ashamed of his order, deemed it his duty to interfere. He had no direct jurisdiction on the subject, but, as head of the law, and himself a member of the Society, he thought that his advice would be listened to. In a letter circulated among the Benchers, after highly praising the "Preliminary Discourse," he said, "A lecture in the spirit of that Discourse would at all times be of great utility, and of much ornament to our profession. In times like the

the lower part of the hall, received this answer:—"I assure you, sir, we all fare alike: we have the same commons with yourselves." The student replying, —"I can only say, we see pass by us very savoury dishes on their way to your table, of which we enjoy nothing but the smell." "Oh!" exclaimed the bencher, "I suppose you mean the '*exceedings*,' but of these the law takes no cognizance."

* An eminent King's counsel being asked, "Whether he did not admire Mackintosh's character of Grotius?"—certainly one of the finest pieces of composition in our language,—answered by another question, "Who was Grotius?"

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present, it is capable of rendering great service to the cause of religion, morality, and civil policy." He then went on, in soothing and respectful terms, to express a hope that the resolution against the author, which had probably been adopted without a due knowledge of his intention, might be reconsidered.*

This appeal was successful; and the lectures being given, it was hoped that the name of Mackintosh would be connected with a new æra in the history of juridical study in England. "The novelty of the undertaking, the acknowledged abilities of the author, and his early fame acquired by the powerful support of opinions which it was known that the course of public events had induced him to modify, threw an interest over the execution of the design, that daily filled Lincoln's Inn Hall with an auditory such as never before was seen on a similar occasion. All classes were there represented; — lawyers, members of parliament, men of letters, and country gentlemen, crowded to hear him." †

Lord Loughborough expressed deep regret that the discharge of his numerous public duties did not permit him to be of the number of the listeners, but he had full accounts brought to him of the lectures, and he was loud in their praise.

Delusion as to Mr. Pitt's plan for paying off the national debt.

Although the Chancellor now took so little part in the debates in the House of Lords, when the income tax was brought forward with a view to raise a large portion of the supplies within the year, he made a speech in support of it, — chiefly remarkable for showing with what admiration Mr. Pitt's delusive scheme for paying off the national debt was still regarded. "It ought to be recollected," said he, "that the present Chancellor of the Exchequer, who has proposed this bill, is the very person who proposed and effec-

* Mr. Pitt, always liberally inclined, at the same time wrote a private letter to Mackintosh, in which he said, — "I cannot refuse myself the satisfaction of assuring you, that the plan you have marked out appears to me to promise more useful instruction and just reasoning on the principles of government than I have ever met with in any treatise on that subject."

† Life of Mackintosh, by his son, vol. i. 107. Mackintosh delivered two courses of lectures; but when he withdrew, the plan of reforming legal education was abandoned, and "we have still the sea to drink."

tually supported the plan of annually setting aside a portion of the supplies to be applied in reduction of the national debt — a plan from which advantages so important have been derived, that the country can never forget the gratitude it owes to the man whose genius prompted him to carry into execution a design so noble and so useful."* Lord Grenville cheered these sentiments, — although he afterwards demonstrated that the national debt was much greater, and much less likely to be redeemed, than if the sinking fund had never been established.

* 34 Parl. Hist. 207.

CHAPTER CLXXIV.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL HE RESIGNED THE GREAT SEAL.

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Difference between Lord Loughborough and Pitt.

NOTWITHSTANDING a display of outward courtesy, there was less and less cordiality between the Chancellor and the Prime Minister. Loughborough, a great observer of public decorum, would not, like his predecessor, leave the woolsack to speak against a Government bill; but, feeling that the confidence to which he thought himself entitled was withdrawn from him, he generally contented himself with putting the question as Speaker, and on a division saying to the tellers,—"content" or "not content,"* never giving an opposition vote. By degrees he began privately to speculate—not upon a change of the Administration, but of its Chief. The Whig Opposition had been nearly annihilated, and Mr. Pitt had overwhelming majorities in both Houses to support whatever measures he brought forward, and to protect him from censure, whatever faults he might commit. But his situation had become very embarrassing. Elated with the success which had attended the arms of the Allies on the Continent while Napoleon was absent in Egypt and Syria, he had refused to treat with him when the successful general had become First Consul,—insolently telling him to abdicate his power and to restore the Bourbons. Not long after, he received intelligence of the battle of Marengo,—and, as in the last scene of a tragedy, messenger after messenger announced some new calamity, till at last the great powers of Europe having succumbed, England had no allies except three feeble states, which required her aid, instead of adding to her means of resistance,—Naples,

Embarrassment of Mr. Pitt's situation.

* According to the usages of the Lords, the "contents" always go below the bar, the not-contents remaining in the body of the House; but the Lord Chancellor is allowed to announce his vote sitting on the woolsack.

Portugal, and the Ottoman Porte. Pitt's proud spirit could not brook the notion of proposing humiliating terms of peace to him whom he had insulted; yet he himself was conscious, and those about him began to whisper, that an attempt at accommodation was necessary, and that the nation could only be induced vigorously to carry on the war by finding that peace was unattainable.

The situation of Ireland gave fresh anxiety to the Minister, particularly from his knowledge that the only true cure for the evils of that country was most odious to the prejudiced and obstinate King. A dangerous rebellion followed the sudden recall of Lord Fitzwilliam, and the disappointment of the hopes which he had excited. When this had been suppressed, all wise men saw that some new system for governing Ireland must be adopted, or that the empire must be dismembered. Two independent co-ordinate parliaments, upon the footing established in 1782, could not go on long, without a fatal collision; and the Catholic body in Ireland, comprehending about seven-eighths of the population, and growing daily in wealth and intelligence, could not quietly submit to the penalties and disabilities by which they were aggrieved and degraded. Under these circumstances Mr. Pitt formed the splendid project of a Legislative Union between the two islands, and of forcing the King to consent to Catholic emancipation, by producing a state of things in which a constitutional sovereign would find it necessary to sacrifice his individual wishes, and to adopt the wholesome advice of his Ministers. Happy would it have been for us if this great man had fully succeeded in his intentions!

Mr. Pitt's plan of carrying the union with Ireland, and Catholic emancipation.

After many difficulties the Irish Union was carried; but all the corruption resorted to would have been unavailing, if there had not been a distinct intimation to the Catholics, that although they must be excluded from all political privileges while Ireland remained a separate kingdom, — under a united legislature they safely might be, and they certainly should be, treated in all respects on an equal footing with their Protestant fellow-subjects. Mr. Adolphus, well informed as to what was passing at Court during this period,

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says (and I believe him) that the assurance was given to the Irish Catholics without the King's privity, and with a full knowledge of his sentiments upon the subject, in the hope that his Majesty, after the Union had taken place, seeing that Catholic emancipation was indispensable, would agree, however reluctantly, to that measure."* Lord Grenville, Lord Spencer, and Mr. Dundas † were in the secret; but Lord Loughborough (I presume from being notoriously a "King's friend") was not informed of the liberal policy by which the Union was to be followed up and made effectual; — and the apprehension that he might betray them increased the estrangement between him and the more influential section of the Cabinet.

Lord Loughborough supports the Bill for a union with Ireland. April 28. 1800.

All went on with apparent smoothness till the Union had been carried, — so far the King and all his Ministers concurring. When the bill was in the House of Lords, Lord Loughborough heartily lent his aid in defending it. The clause allowing Irish peers to sit in the House of Commons, on renouncing the privileges of the peerage, being strongly censured by Lord Mulgrave as derogatory to the dignity of their order, he said, "I am a good deal surprised at what has fallen from the noble lord, whose whole discourse seemed better suited to an assembly of French or German *noblesse* than to a British House of Peers. Did any of your Lordships ever estimate so highly your nobility of blood as to think it vitiated by your mixing as legislators with the gentry of England? The noble lord says, 'it would be degrading to see an Irish peer of the first rank come to your bar decorated with ribbons, while the youngest Irish baron may be sitting among your Lordships.' It has fallen to my lot, when junior baron of this House, to walk down to the bar to receive messages from the Commons delivered by the

* Hist. vol. vi.

† This gentleman was particularly blamed for the part he took, being so well acquainted with the King's private sentiments. In a conversation some time previously, the King having objected the coronation oath as an insuperable objection to any farther concession to the Catholics, Harry had tried to argue the King into the belief that this was binding upon him in his executive, not in his legislative, capacity; but his Majesty cut him short by exclaiming, "No Scotch metaphysics, Mr. Dundas; none of your Scotch metaphysics!"

eldest son of the premier Duke of England, and by Irish peers of higher rank than myself — and I never felt any embarrassment in such encounters. Why may not Irish peers sit in the House of Commons after the Union as they have hitherto done, — finding themselves by the side of the eldest sons of the highest English nobility, and training themselves in a popular assembly, to be useful here if they should be chosen representative peers, or if they should be added to the peerage of the United Kingdom?" *

King's speech at close of Session, framed to hold out hopes to the Catholics. July 29. 1800.

The Bill at last received the royal assent, and the King, at the conclusion of the session (probably not being aware of the full import of the speech made for him), was induced to say, "This great measure, on which my wishes have been long earnestly bent, I shall ever consider as the happiest event of my reign, *being persuaded that nothing could so effectually contribute to extend to my Irish subjects the full participation of the blessings derived from the British Constitution.*" †

Proceedings when Union took effect.

On the 1st of January, 1801, the day on which the Incorporate Union between Great Britain and Ireland took effect, Lord Loughborough attended at a grand council held at St. James's, bearing the seal that for some purposes had become the seal of the whole United Kingdom. The ceremony of his resigning it and receiving it back was considered unnecessary; but the Heir Apparent, the Dukes of York, Clarence, and Kent, all the King's Ministers, and the most eminent dignitaries of the Church and Law attending, they were sworn in as imperial privy councillors, and orders were issued for making the necessary alterations in the style of the Sovereign, the national arms ‡, and the Book of Common Prayer.

* 35 Parl. Hist. 160. † Ib. 494.

‡ Lord Loughborough was much abused for the order by which the lilies were struck out of the King's shield, and he ceased to be called "King of France." We now read with amazement of the keen objections made to the dropping of these fooleries. George III. was "rightful and lawful King of these realms," by Act of Parliament and the will of the nation; but he would have found it difficult to make himself out heir to Edward III., supposing that King to have had a title (which he had not) to the French crown. There was no loss of dignity in voluntarily waiving what might justly be offensive to our neighbours.

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A great crisis was at hand. Mr. Pitt's Administration, which had lasted near twenty years, and seemed stronger than ever, was speedily to be dissolved. — From the new materials with which I have been furnished, I am enabled to give a much fuller and more authentic statement of the circumstances which led to this event, than has yet been laid before the public.

Approaching fall of Mr. Pitt.

How far the suspicion is well founded, that Mr. Pitt was desirous of a plausible pretext for surrendering office, so that another Minister might conclude a peace with France, must for ever remain a mystery. His conduct has in some degree the aspect of his having been actuated by such a motive; he probably felt more deeply that without an interval of repose the contest could not be carried on, and that there were peculiar difficulties in his way, were *he* now to attempt to open a negotiation with the First Consul. But if he did precipitate his resignation with such a view, I believe that he never explained his plan to any human being, and that he hardly owned it to himself. According to all the most private and confidential documents which I have seen connected with the subject, he was proceeding earnestly and sincerely to emancipate the Irish Roman Catholics, — when, against his will, he quarrelled with the King, and was dismissed from office. This result was mainly brought about by the intrigues of Lord Loughborough.

Intrigues of Lord Loughborough respecting Catholic emancipation.

Opinions given by him on this subject in 1795.

To lay open these properly, I must go back to the year 1795, when Earl Fitzwilliam was sent as Lord Lieutenant to Ireland, and a bill was proposed in the Irish Parliament to relieve Roman Catholics from their civil disabilities. The King, entertaining conscientious doubts how far his consent to such a measure would be consistent with his coronation oath, consulted Lord Kenyon and Sir John Scott, the Attorney-General, upon the point, and they then advised him that this oath was not binding upon him so as to prevent him from consenting, in his legislative capacity, to a relaxation of penal laws in favour of any class of his subjects; but Lord Loughborough, by whom it was not supposed that such scruples could have been countenanced,

(for the purpose, I fear, of gaining favour with the King by flattering his prejudices,) wrote the following paper, which in the handwriting of George III. is thus entitled:

"Thoughts on the Emancipation of the Roman Catholics of Ireland, and Dangers arising from granting them. March 5th, 1795."

"As* the object petitioned for by the Roman Catholics of Ireland is the total abolition of all distinctions in religion, it requires consideration how far that object could be effected consistently with the Constitution.

"The only laws which now affect Papists in Ireland are the Acts of Supremacy and Uniformity, the Test Act, and the Bill of Rights. The question deserves serious investigation, how far the King can give his assent to a repeal of any one of these Acts without a breach of his Coronation Oath, and the Articles of Union with Scotland. The construction put upon the Coronation Oath by Parliament at the Revolution seems strongly marked in the Journals of the House of Commons. A clause was proposed by way of rider to the bill establishing the Coronation Oath, declaring that nothing contained in it should be construed to bind down the King and Queen, their heirs and successors, not to give the royal assent to any bill for qualifying the Act of Uniformity, so far as to render it palatable to Protestant Dissenters; and the clause was negatived upon a division. This leads to the implication that the Coronation Oath was understood at the Revolution to bind the Crown not to assent to a repeal of any of the existing laws at the Revolution, or which were then enacted for the maintenance and defence of the Protestant religion as by law established.† If the oath was understood to bind the Crown not to assent to a repeal of the Act of Uniformity in favour of Protestant Dissenters, it would seem to bind the Crown full as strongly not to assent to the repeal of the Act of Supremacy, or the Test Act, in favour of Papists. Another question arises by the provisions of the Act limiting the succession to the Crown, by which a forfeiture of the Crown is expressly enacted, if the King upon the throne should hold communion with, or be reconciled to, the Church of Rome. May or may not a repeal of the Act of Supremacy, and the establishing the Popish religion in any of the hereditary dominions,

* The rest is in the handwriting of Lord Loughborough himself.

† The clause may have been very properly rejected as unnecessary, and raising a doubt as to the power of the Crown to give the royal assent to other acts in *pari materia*.

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be invidiously construed as amounting to a reconciliation with the Church of Rome? The Chancellor of England would, perhaps, incur some risk in affixing the English Seal to a bill for giving the Pope a concurrent ecclesiastical jurisdiction with the King.

"It is likewise apprehended, that by the Articles of Union with Scotland it is declared to be an essential and fundamental article that the King of Great Britain shall maintain the Church of England as by law established, in England, Ireland, and Berwick upon Tweed.

"The bargain made by Ireland in 1782 by Yelverton's Act should be referred to, and the question will occur, whether a repeal of any of the English statutes adopted by this Act in this country would not be a direct violation of the compact then made by the Parliament of Ireland with Great Britain.

"These queries are humbly submitted with a view only to a due investigation of so important a measure.

"March 5. 1795."

George III., fortified by such authority, drew up the following observations, which he sent to Mr. Pitt: —

Declaration against Catholic emancipation by the King, in 1795.

"Having yesterday, after the drawing-room, seen the Duke of Portland, who mentioned the receipt of letters from the Lord Lieutenant of Ireland, which to my greatest astonishment propose the total change of the principles of government which have been followed by every Administration in that kingdom since the abdication of King James II., and consequently overturning the fabrick that the wisdom of our forefathers esteemed necessary, and which the laws of this country have directed; and this after no longer stay than three weeks in Ireland, venturing to condemn the labours of ages; and wants an immediate adoption of ideas * that every man of property in Ireland, and every friend to the Protestant religion, must feel diametrically contrary to those he has imbibed from his earliest youth.

"Undoubtedly the D. of Portland made this communication to sound my sentiments previous to the Cabinet meeting to be held to-morrow on this weighty subject. I expressed my surprise at the idea of admitting the Roman Catholics to vote in Parliament; but I chose to avoid entering further into the subject, and only heard the substance of the propositions, without giving my sentiments. But the more I reflect on this subject, the more I feel the

* Sic.

danger of the proposition, and therefore should not think myself free from blame if I did not put my thoughts on paper, even in the present coarse shape, the moment being so pressing, and not sufficient time to arrange them in a more digested state previous to the D. of Portland's laying the subject before the Cabinet.

"The above proposal is contrary to the conduct of every European Government, and, I believe, to that of every state on the globe. In the states, the Lutheran, Calvinist, and Roman Catholic religions are universally permitted, yet each respective state has but one church establishment, to which the states of the country and those holding any civil employment must be conformists; court offices and military commissions may be held also by persons of either of the other persuasions, but the number of such is very small. The Dutch provinces admit Lutherans and Roman Catholics in some subsidised regiments; but in civil employments the Calvinists are alone capable of holding them.

"Ireland varies from most other countries by property residing almost entirely in the hands of the Protestants, whilst the lower classes of the people are chiefly Roman Catholics: the change proposed, therefore, must disoblige the greater number to benefit a few,—the inferior orders not being of rank to gain favourably by the change. That they may also be gainers, it is proposed that an army be kept constantly in Ireland, and a kind of yeomanry, which in reality would be Roman Catholic police corps, established, which would keep the Protestant interest under awe.

"It is but fair to confess that the whole of this plan is the strongest justification of the old servants of the Crown in Ireland for having objected to the former indulgences that have been granted, as it is now pretended those have availed nothing, unless this total change of political principles be admitted.

"English Government ought well to consider before it gives any encouragement to a proposition which cannot fail, sooner or later, to separate the two kingdoms, or, by way of establishing a similar line of conduct in this kingdom, adopt measures to prevent which my family was invited to mount the throne of this kingdom in preference to the House of Savoy.

"One might suppose the authors of this scheme had not viewed the tendency or extent of the question, but are actuated alone by the feverish inclination of humiliating the old friends of English government in Ireland, or from the desire of paying implicit obedience to the heated imagination of Mr. Burke.

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"Besides the discontent and charges which must be occasioned by the dereliction of all the principles that have been held as wise by our ancestors, it is impossible to foresee how far it may alienate the minds of this kingdom; for, though I fear religion is but little attended to by persons of rank, and that the word *toleration*, or rather *indifference* to that sacred subject, has been too much admitted by them, yet the bulk of the nation has not been spoiled by foreign travels and manners, and still feels the blessing of having a fixed principle from whence the source of every tie to society and government must trace its origin.

"I cannot conclude without expressing that the subject is beyond the decision of any Cabinet of Ministers—that, could they form an opinion in favour of such a measure, it would be highly dangerous without previous [word illegible] with the leading men of every order in the state, to send any encouragement to the Lord Lieutenant on this subject; and if received with the same suspicion I do, I am certain it would be safer even to change the new Administration in Ireland, if its continuance depends on the success of this proposal, than to prolong its existence on grounds that must sooner or later ruin one if not both kingdoms."*

Mr. Pitt yielded,— Earl Fitzwilliam was recalled,— and the Irish rebellion in due time followed. But the King believed he had done his duty, and considered Lord Loughborough's reasoning as a sufficient justification for his following the same course in all time to come.

The Catholic question was not again mentioned till after the Irish Union—with the exception of the assurances given privately by Mr. Pitt to the Irish Catholics, that if this measure were carried, their relief could not be longer withheld.

Proceedings at

I must now shift the scene to Weymouth, where, in the

Memorandum in the King's hand writing, in 1801.

* There is a copy of this paper in the Rosslyn MSS., with the following memorandum upon it in the handwriting of George III.: — "Paper drawn up on the Earl Fitzwilliam pressing a further emancipation of the Irish Papists, and transmitted to Mr. Pitt; who, having approved of it then, ought not on the 31st of January to have made a similar proposal, and seemed surprised I would not follow him in changing my opinion. His ground of *expediency* certainly was futile; and the more, as every Irish Protestant felt the ruin of the measure if adopted. And I, certainly feeling the duty I owe to my coronation oath, could not have given my assent to any bill that had but the shadow of putting Papists and Presbyterians in a state of equality with the Church of England.
"12th April, 1801. George R."

autumn of the year 1800, the Chancellor was in attendance upon the King. Till the end of September they were both kept in ignorance that any measure was in contemplation respecting the civil disabilities of any class of religionists in the empire, — the deliberations, in which all the members of the Cabinet participated, being confined to the suppression of riots at home on account of the high price of provisions, and to the negotiation of a naval armistice which had been proposed by the Government of France. The two following letters on these subjects were written by Mr. Pitt to Lord Loughborough from Downing Street: —

Weymouth in the autumn of 1800.

("Private.) Sept. 5th, [1800].

"My dear Lord,

"The King will undoubtedly communicate to you the papers which Lord Grenville is now despatching, which contain a reply from Otto to our note on the proposal for an armistice, and the French *projet* for that purpose, as well as the *contre-projet* which we have thought it right to propose as fit to be adopted. The question is certainly a delicate one, as any naval armistice is now, and the benefits (as far as they go) are all on the side of France. But the absolute refusal of such a measure would, as I conceive, clearly produce the immediate renewal of hostilities between France and Austria, and probably drive the latter, after some fresh disaster, or from the apprehension of it, to an immediate separate peace on the worst terms. We should thereby not only lose the benefit of a joint negotiation (at which we have so long been aiming), but should also give up the present opportunity of negotiating for ourselves in a manner much more creditable and satisfactory than would result from any direct and separate overture which we might make at a later period. On the other hand, if the joint negotiation is admitted, its natural course may probably carry us to such a period of the year that it must either terminate in a treaty on terms satisfactory to us and Austria, or be broken off when the season will no longer admit of the French army making any decisive progress in Germany, and when Austria will consequently have the interval till the spring for additional preparation. In addition to these considerations, it seems to me to be of the *utmost* importance, with the men to support both in Parliament and the country, that we should not reject the proposal in any manner which enemies either abroad or at home may make use of against us. For these reasons I am strongly convinced that

Mr. Pitt to Lord Loughborough.

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The proposed measure was highly disagreeable to the King, who abhorred the idea of entering into any terms with the French regicides; but Lord Loughborough seems with sincerity to have tried to soothe his indignation, and wrote the following letter upon the subject to the War Minister: —

("Private.) Weymouth, Wednesday, Sept. 17th, 1800.

"DEAR DUNDAS,

Lord Loughborough to Mr. Dundas on the naval armistice, &c.

"You could not have been more surprised than I was with the first communication of a project for a naval armistice. The royal mail had brought a despatch in the morning, with which the King seemed very much satisfied. He gave it to me upon his landing at Portland Island, and as Windham and I rode with him, told us that it contained the French project for a naval armistice, which appeared, by Lord Grenville's letter, to be thought *totally inadmissible*. There was no opportunity of reading the despatch in the course of the morning, but I had run my eye over it very hastily when the carriages were at the door after dinner, and told Windham that the letter did not seem quite so strong as H. M. had taken it to be. Upon our return to the Lodge, we learnt that a messenger had arrived: the King called us in, and made me read the despatch, with which he was very much agitated. The letter did not contain much reasoning upon the subject; but stated the unanimous opinion of those present to transmit the counter project on our part. It seemed to me, at that moment, that a discussion of the measure itself was useless, and that nothing remained but to fix the limits of concession, that it should go no farther. The King's answer was to that effect. When I got home I found a letter from Mr. Pitt, which I ought to have received before I had seen the King, as it contained a much better justification of the measure than Ld. G.'s letter, and made a strong impression not only on my mind, but on Windham's. The consideration which I felt the most strongly was, the influence of the measure at home. There are many men, certainly, who may feel it to be a dangerous concession to admit the possibility of a naval armistice, but amongst those of that opinion you will find a very considerable proportion who are disinclined to all continental engagements. With only such support it would be a very difficult task to maintain the contest in which we are engaged. Another class of men, from whom no good is ever to be derived, consists of those who, from weakness or malevolence, cry out for peace. To guard against the mischief they

may do, it is necessary to risk, to a certain degree, the danger of concession in any approach to negotiation. We have hitherto gained by an appearance of a disposition to treat, and I have great faith in Mr. Pitt's knowledge and judgment of the public mind. For the rest, I concur in a very great degree with your reasoning, except that I do not think it quite so easy to detach ourselves entirely from Austria, especially at a moment when, after great efforts, that power is suffering under the adverse fortune of war.

"The King is very much pleased with your dissent, and I showed him your letter to me. It is not impossible that I might have joined in that dissent at Cheltenham; but at Weymouth it was a very different case. After all, however, I have a strong confidence that the answer from Paris will leave no difference of opinion amongst us, though I feel a little uneasy at the delay, which seems to indicate some hesitation on the part of the Consul, whether to accept or reject our proposal.

"*Thursday*, 10th.—I could not finish my letter yesterday in time for the messenger, and the mail of this morning has made the greater part of it unnecessary. I should hardly have troubled you with it, if the King, who is perfectly satisfied with the present state of things, had not directed me to tell you that he agrees entirely with the reasoning of your letter to me, and that he thinks you had not seen his short note in answer to L[d] G.'s despatch on the counter-project. The answer of this day alludes to it. We are now, fortunately, restored to our proper situation, and Otto's note affords a complete justification of our refusal to yield what the enemy acknowledges would have given them the means of retrieving their own losses, and restoring their naval power.

"I must close here for the present, lest I lose the messenger again, who will set off immediately after the council. I have not yet had any conversation with the D. of Portland, who is arrived, and waits for me.

"I ever am, dear Dundas,

"Yours most entirely,

"LOUGHBOROUGH."*

The terms required by the French being wholly inadmissible, the negotiation for the proposed armistice was at an end, to the mutual satisfaction of the King and his Ministers; and it seemed as if no other subject of difference was likely to arise between them. But Mr. Pitt, who in concert with

* Melville MSS.

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Lord Grenville, Mr. Dundas, and Lord Castlereagh, had been laying a plan for the emancipation of the Irish Catholics, — intending that the King should not be made aware of it till it was matured, — on the 25th of September wrote the following letter to Lord Loughborough: —

Mr. Pitt's letter to Lord Loughborough on Catholic emancipation.

(" Private.)

" MY DEAR LORD,

" There are two or three very important questions relative to Ireland, on which it is very material that Lord Castlereagh should be furnished with at least the outline of the sentiments of the Cabinet. As he is desirous not to delay his return much longer, we have fixed next Tuesday for the Cabinet on this subject; and though I am very sorry to propose any thing to shorten your stay at Weymouth, I cannot help being very anxious that we should have the benefit of your presence. The chief points, besides the great question on the general state of the Catholics, relate to some arrangement about tithes, and a provision for the Catholic and Dissenting Clergy. Lord Castlereagh has drawn up several papers on this subject, which are at present in Lord Grenville's possession, and which you will probably receive from him by the post.

" Ever, my dear Lord,

" Yours very sincerely,

" W. PITT."

Lord Loughborough betrays Mr. Pitt to the King.

I am much afraid that Lord Loughborough behaved disingenuously on the receipt of this letter. Sincerely believing that Mr. Pitt was ill qualified for conducting the contest with France, he might patriotically wish that another minister should be substituted for him *, but nothing can justify the arts to which he seems to have had recourse for effecting this object. It has been said that, as soon as he gained information of Mr. Pitt's intentions respecting the Roman Catholics, he treacherously made a communication on the subject to the Archbishop of Canterbury, and prevailed upon him and other Prelates to make a strong representation to the King that

* If we may believe Lord Malmesbury's Diary, the King at this time summoned Mr. Windham and the noble Diarist to Weymouth, with the intention of making the fromer Prime Minister, and the latter Foreign Secretary. He adds, —" I have no doubt it transpired somehow or other through the Chancellor, who has been acting various parts lately." — Vol. iv. 23.

"the Church was in danger." I do not find any sufficient evidence of this fact, but there seems to be no doubt that in breach of good faith he showed Mr. Pitt's last letter to the King, — disclosed to him the contents of the papers therein alluded to, which were forwarded by Lord Grenville; — incensed the King against such of his Ministers as were proceeding in this important affair without His Majesty's privity, and advised him to part with those Ministers rather than submit to such an outrage on his dignity, and to such a violation of his coronation oath. We shall by and by see how far these charges are refuted or corroborated, by a paper afterwards drawn up by Lord Loughborough himself, to prove that his colleagues had no reason to complain of him.

Meeting of the Cabinet on Catholic emancipation.

He came to London and attended the Cabinet on the 30th of September, when Mr. Pitt explained his simple, comprehensive, and effectual measure to get rid of civil disabilities on account of religious belief, — which was, to abolish the oaths of supremacy and abjuration, and all such oaths and declarations, and to require only the old common law oath of allegiance, which might be taken by persons of all creeds, and which for many centuries had been found a sufficient recognition of the duties of the subject to the Sovereign. Lord Loughborough declared loudly against this plan, or any modification of it, or any relaxation of the penal laws against the Roman Catholics, and declared that nothing could be done to affect the ecclesiastical condition of Ireland, except a commutation of tithes. He added, that he had paid much attention to this last subject, and, with the assistance of one of the Judges, he was preparing a Bill to carry his views into effect. He was desired to mature the measure; and in ignorance of his secret communings on Catholic Emancipation with the King, his colleagues were in hopes that before Parliament met, his objections to Mr. Pitt's plan might be removed, and it might be submitted to the King, with the recommendation of all his Ministers.

The measure is opposed by Lord Loughborough.

Lord Loughborough secretly writes a

But the Chancellor set secretly to work, and composed a most elaborate and artful paper, showing forth the dangers likely to arise from Mr. Pitt's plan, in a manner admirably

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long paper against the plan, and sends it to the King.

calculated to make an impression on the royal mind.* I give as a specimen his defence of the Test Act, which was to be repealed. After referring to the statutes passed to insure Protestant ascendancy, he says: — "These are the safeguards of the Protestant episcopal religion, which the Government in all its departments is bound to support and maintain. The frame of the law and every part of our civil policy is adapted to this object. The Test Act alone has been the subject of some cavil amongst Protestants. It would be well, however, for those objectors to consider whether without such a guard the kingdom would not either have relapsed into popery or fallen into a chaos of independency, irreligion, and anarchy.† To all these acts every Papist must object, not only as inconvenient and hard, but as a violation of what he deems just and legal rights, the effects of a pernicious heresy which he regards as a national calamity. Can a person holding these sentiments, rendering habitually an account of the movements of his mind, and submitting the direction of his conscience to a priest whose functions oblige him to enforce such opinions, be a fit member of the deliberative or executive councils of a Protestant community? The exclusion of Papists from Parliament and office was coëval with the Reformation."

This paper, remarkable for ingenuity rather than observance of logical rules or a regard for historical accuracy, Lord Loughborough sent to the King at Windsor in the beginning of December, and thereby fully fortified him against the forthcoming plan for placing all his subjects on an equal footing as to their civil rights.‡

* See it at full length in the Appendix to the first volume of Dean Pellew's Life of Lord Sidmouth, where it occupies thirteen closely printed octavo pages.

† This defence was particularly unbecomiug in a Scotchman, to whose country the Test Act was so insulting. If rigidly enforced, no member of the Church of Scotland could have held any office, civil or military, under the Crown. The Presbyterians originally acquiesced in it, that it might be executed against the Roman Catholics, — hoping to be connived at themselves.

‡ The original was found among Lord Sidmouth's papers, enclosed in an envelope bearing the following words, in the handwriting of the King himself: — "The Lord Chancellor's reflections on the proposal from Ireland of emancipating the Roman Catholics, — received December 13th, 1800." Underneath the King's writing Mr. Addington has added — "From the King; given to me in February, 1801."

The pro-Catholic section of the Cabinet, ignorant of this correspondence, still tried to make a convert of Lord Loughborough. With this view Mr. Dundas wrote to him a most admirable letter, which has been communicated to me by the present Viscount Melville, and which will be found in the Appendix. But all its statesmanlike reasoning was thrown away upon a man actuated by interest—not by conscientious conviction.

Mr. Pitt persists in it without communicating it to the King.

Mr. Pitt persevered, and took a course not quite consistent with the respect due to the Sovereign, nor well calculated for success if Catholic emancipation really was his chief object. Lord Malmesbury says, "If Pitt had been provident enough to prepare the King's mind gradually, and to prove to him that the test proposed was as binding as the present oath, no difficulty *could* have arisen. Instead of this he reckons on his own power, never mentions the idea at St. James's, and gives time for Lord Loughborough directly, and for Lord Auckland indirectly, through the Archbishop of Canterbury and Bishop of London, to raise an alarm in the King's mind, and to indispose and exasperate him against the framers of this measure."*

Mr. Pitt at last proposes his plan to the King.

The Premier made no communication whatever to the King upon the removal of Catholic disabilities, till Parliament having actually assembled, the House of Commons had elected a Speaker†,—and then wrote a long letter to him explaining the proposed measure, and pressing that his Majesty should recommend it in his speech from the throne as necessary for the purpose of consolidating the Union, and giving contentment to all classes of his Majesty's subjects. Lord Loughborough thereupon wrote the following letter to the King, which he thought insured to himself long tenure of office with increased power:—

Lord Loughborough's letter to

"The Chancellor, after the most anxious deliberation on the very important crisis to which your Majesty's Government is now exposed, feels it to be his duty to expose to your Majesty, in the

* Diary, vol. iv.

† Parliament met Jan. 22. 1801. The speech from the throne was not delivered till the 2d of February, the interval being filled up with choosing the Speaker and swearing in the members."—35 *Parl. Hist.* 858.

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the King against Mr. Pitt's plan, after it had been communicated to the King by Mr. Pitt.

most unreserved manner, all the ideas he has been able to collect and digest upon a situation so totally unexpected.

"Your Majesty's opinion upon a question of the utmost magnitude, brought into discussion at the present moment (when no immediate pressure seemed to call for that discussion), had, without doubt, been long known to every one of your confidential servants — at least from the year 1795, at which period you had been pleased not only to express your decision upon the subject then in discussion, but by an express requisition to the Chancellor, to manifest the grounds upon which that opinion was formed.

"The Chancellor at that period thought it his duty to communicate to his colleagues that opinion, and the very serious grounds on which it was founded, and which seemed to him unalterable, though they were not (as your Majesty knows) so obligatory, according to the opinion he had frankly expressed, as your Majesty had felt them to be.

"In the discussion of the business of the Union, no consideration occurred, according to my recollection, which could call for a review of the opinions known to prevail in 1795, nor, as I believe, any assurance pledged of a change of opinion upon the state of religion, as an inducement for acquiescence or support in that measure.

"The question was (to me most unexpectedly) raised in October last. I opposed the proposition in its extent from its outset, and thought myself not singular in that opposition. I stated the grounds of my opposition in writing, and committed them to a fair circulation amongst all my colleagues in your Majesty's service. You were pleased, knowing of the discussion that was then going on, to express a desire to know my opinion on the various parts of the deliberation. As it was my duty to do, I sent to your Majesty in an official box those papers which for some weeks had been in circulation, and which you could have commanded to be sent to you from the office, and which were sent through the office.

"Amongst the strange misconceptions of the times, it is suggested, I understand, that my private communication with your Majesty had excited an indisposition to hear any other representation on the subject. I have ever thought it my duty to express to your Majesty my own opinion on any subject when you pleased to require it, and I trust that I never have disclosed the opinion of any other person; on this occasion particularly I am confident that I told your Majesty that no person except myself seemed to have formed a decided opinion."

The King refuses to consent, and dismisses Mr. Pitt.

It has been said that Lord Loughborough not only, in personal intercourse with the King, advised him to resist the proposal, and to dismiss his minister, but actually wrote the answer in which the dismissal is contained. This last statement, however, is without proof, and is very improbable in itself. The King was pleased with the advice he had received from the Chancellor, but by no means placed entire confidence in him. The true "Keeper of the Royal Conscience" now was John Lord Eldon, whose genuine, uniform, and zealous bigotry (with a slight aberration in 1795) had endeared him to his royal master. The actual holder of the Great Seal not only came from a Presbyterian country, and had spoken as a Ruling Elder in the General Assembly of the Kirk of Scotland against persecuting David Hume, but since he arrived in England had on several occasions notoriously uttered the latitudinarian sentiment, "that political rights should not depend upon religious creed," although recently he had professed himself a convert to the doctrine, "that none ought to be permitted to hold office who did not belong to the Anglican Church;" and, further, had pronounced its head to be infallible. The King's answer, likewise, contains internal evidence that it was not dictated nor revised by Lord Loughborough, who always wrote like a man of education, and could not have been privy to the composition of such a production as this: —

The King's letter objecting to the measure.

"A sense of religious as well as political duty has made me, from the moment I mounted the throne, consider the oath that the wisdom of our ancestors has enjoined the kings of this realm to take at their coronation, and enforced by the obligation of instantly following it, in the course of the ceremony, with taking the Sacrament, as a binding religious obligation on me to maintain the fundamental maxims on which our Constitution is placed, namely, that the Church of England is the established one; and that those who hold employments in the state must be members of it, and consequently obliged not only to take oaths against Popery, but to receive the holy Communion agreeably to the rites of the Church of England. This principle of duty must, therefore, prevent me from discussing any proposition tending to destroy the groundwork of our happy Constitution; and much more so that now men-

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tioned by Mr. Pitt, which is no less than the complete overthrow of the whole fabric." .... "I had flattered myself, that on the strong assurance I gave Mr. Pitt of keeping perfectly silent on the subject whereon we entirely differ, provided, on his part, he kept off from any disquisition on it for the present, we both understood our present line of conduct; but as I unfortunately find Mr. Pitt does not draw the same conclusion, I must come to the unpleasant decision, as it will deprive me of his political service, of acquainting him that, rather than forego what I look on as my duty, I will, without unnecessary delay, attempt to make the most creditable arrangement, and such as Mr. Pitt will think most to the advantage of my service, as well as to the security of the public." *

Feb. 1. 1801. Dissolution of Mr. Pitt's Government.

The same day that this letter was written there happened to be a Levee at St. James's, and the King made a declaration, intended to be circulated, "That he should consider any person who voted for the measure proposed by his Minister, as personally indisposed towards himself."

Jan. 22. Proceedings on the change of Administration.

Upon these manifestations of the royal will, Mr. Pitt communicated to the whole Cabinet, that his Administration was at an end: but as the first United Parliament of Great Britain and Ireland had assembled, and Mr. Addington had been re-elected Speaker, and the session was to be opened next day, it was necessary to frame a speech for the King which should make no allusion to this unhappy difference, and that the change of Ministry should not be announced till after the address had been voted by both Houses.

Accordingly, the speech in vague terms described the Union with Ireland as "a measure calculated to augment the resources of the empire, and to cement more closely the interests and affections of His Majesty's subjects."

While the question of Catholic Emancipation was not alluded to in the debate on the address in the House of Lords, in the House of Commons regret was expressed that

* Adolphus, vol. vii. 449, 450. There are two letters from the King to Mr. Addington, dated 5th and 6th Feb. 1801, which clearly prove that at the time when Mr. Pitt was dismissed, and Mr. Addington was called in, no communication was going on between the King and Lord Loughborough."—*Life of Sidmouth*, vol. i. 294–5.

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the speech from the throne held out no hope of strengthening the empire in this season of difficulty by communicating equal rights to all classes of the community. Ministers contented themselves with defending their foreign policy. As soon as the address was carried, Mr. Pitt and Mr. Dundas ceased to attend in the House, and the fact became known that they were virtually out of office.

Feb. 9. Feb. 10. Lord Loughborough's disappointment in finding that Lord Eldon was to be Chancellor.

What was the astonishment of the public when they were informed that Mr. Addington had been sent for to construct the new Cabinet! And what was the consternation of Lord Loughborough when he certainly knew that Lord Eldon was to be Chancellor! * Never was there such a striking example of the engineer "hoist with his own petard." There had been rumours afloat that Lord Eldon, when made Chief Justice of the Common Pleas, had engaged, at the King's urgent request, to accept the Great Seal, as soon as a vacancy could be made for him; but these Lord Loughborough had entirely disbelieved, confiding in the King's courteous behaviour to him, — the credit he had gained in quelling the riots in 1780, — his services in bringing over the Whigs in 1792, — the strong Anti-Jacobin zeal he had since displayed, — and above all, the vigor with which he had opposed Mr. Pitt's measure in favour of the Catholics. But instead of continuing to hold his high office, and becoming, as he hoped, the most influential member in the new Cabinet, he suddenly found that he was to be reduced to insignificance, and exposed to ridicule. †

When the change of Government was announced in the House of Lords by Lord Grenville, he did not mention the name of Lord Loughborough, saying only, that "some time ago, Earl Spencer, the Earl of Chatham, and himself, with several of His Majesty's servants in the other House, think-

* From a letter of Lord Eldon to Lord Kenyon it appears that even so late as the 14th of February he with coyness talked doubtfully of his appointment; but it had been finally fixed more than a week before.

† "Lords Loughborough and Auckland appear to have bungled the business, and not to have resolution or firmness of character to act openly on what they have combined (I apprehend) secretly. The consequence is, that the Chancellor will resign against his will." — *Lord Malmesbury's Diary*, vol. iv. 5.

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ing it expedient that the benefits of the Union should be rendered as extensive as possible, by the removal of certain disabilities from a great portion of the people of Ireland, and that the measure could only be effectual by coming from the Executive Government, had proposed it; that it was not deemed eligible; that not being able to prevail, and their policy remaining unaltered, they considered themselves bound to retire, and that they only held their offices till their successors were appointed."* Lord Loughborough remained silent; and many supposed that he would be included in the new arrangement.

Feb. 17. The King again in a state of mental alienation.

While things were in this unsettled state, the confusion was unspeakably aggravated by the King having a sharp attack — not to be concealed — of his illness of 1788. He was for a short time made to sign papers laid before him; but, becoming incapable of this act, the state of his mind was made known by daily bulletins; and by order of the Privy Council, public prayers were offered up for his recovery. Speculations for a Regency were renewed; and, the retiring Ministers still holding the Seals of Office, it was supposed that they would be forced back into power, till by the old "phantom" a Regent should be appointed — probably the Prince of Wales — who was then entirely under the influence of Lord Thurlow, Mr. Fox, Mr. Sheridan, and Mr. Erskine. No contingency now offered any hope to Lord Loughborough; and he watched the progress of the royal malady with feelings very different from those which he had exhibited twelve years before, on a similar occasion. All that he could expect was to continue to hold the Great Seal while the forms were gone through of examining the King's physicians, of appointing secret committees, of providing for the custody of the King's person, of debating the restrictions to be put on the Regent, and by a "forged process" giving the royal assent to the Regency Bill.

Lord Loughborough obtains the King's sig-

Lord Loughborough did make an effort to be reconciled to the Prince of Wales, and had two interviews with him under colour of communicating to him the state of the

* Adolphus, vii. 451.

King's health; but his Royal Highness was inexorable, and he openly expressed his impatience to assume the Regency that he might throw himself into the arms of the Whig Opposition.* To mortify him, Lord Loughborough resolved that this consummation should be delayed as long as possible, and set a dangerous precedent, which his successor repeatedly acted upon, by making the King appear personally to exercise the most important prerogative of the Crown when in a state of mental alienation. On the 25th of February, while his Majesty was under the care of Dr. Willis, he was made to sign a Commission for giving the royal assent to an Act of Parliament. Lord Loughborough declared that "when he carried the King the *Brown Bread Act* to pass by Commission, his Majesty was in the perfect possession of his understanding."† But Lord Malmesbury justly considers such a declaration as an aggravation of the offence which was committed.

nature to a commission for giving the royal assent to an Act of Parliament, when his Majesty was under the care of Dr. Willis.

On this occasion a letter, which might have caused some alarm, was addressed to Lord Loughborough by a former political associate: —

"My Lord,

"Upon the distant terms on which we have lately lived, I admit you have a right to consider the following advertisement as a seizure of an opportunity of conveying something petulant and vindictive.

Letter from Lord Carlisle to Lord Loughborough upon this subject.

"Probing my own heart, I feel I may cast aside such dirty motives.

"It is believed that you, the Chancellor, was not present in the room when the King's hand was put to the first Commission. It remains with you to choose whether you will force on inquiry from the attendant physician to this important point, or whether you will obviate it by taking a bill of indemnity.

"The hint is not from an enemy but a friend.

* Diary, vol. iv. 17.

† Ib. 17. Yet Lord Malmesbury himself seems to have become less scrupulous. He says, under date 7th March, — "Idea of a Council at Buckingham House on Tuesday, but it is hoped not, and that the Chancellor *by himself* will carry the Loan Bill to sign."

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"I shall be happy to find I am mistaken in all my facts, and that the testimony of Dr. Willis will do away this suspicion.

"I am, with great respect,

"CARLISLE."*

The King is cured by the new Prime Minister. March 3.

The speculations about a Regency were almost miraculously put an end to by a "prescription" of the new Prime Minister — in a literal — not a figurative sense. Being the son of a medical man, he had heard from his father that such irritations as now disturbed the nerves of his Majesty might be allayed by the patient's head reposing on a pillow of hops. The recipe was accordingly tried,—sleep was induced,—next

* Rossl. MSS. The letter is without date; but there is the following endorsement upon it in the handwriting of Lord Loughborough: — "E. of Carlisle, 19th March, 1801."

The following letter, without date, from Lord Carlisle to Lord Loughborough, marks the coolness that had previously subsisted between them: —

Lord Carlisle to Lord Loughborough, complaining of ill-usage.

"My dear Lord,

"There is nothing, I believe, more true, than that in friendship a slight scratch, by *concealment*, grows into a wound difficult to cure. I am determined not to fall into this error. Therefore, to avoid what between friends is so pernicious, I proceed honestly and openly to a confession that the ignorance in which I have now for an unusual time remained upon a subject most interesting to me, because of great moment to you, mortifies me and humiliates me.

"I am not certain I should have taken this moment for breaking through a silence painful alike to quit or adhere to, had I not thought it right to mention a circumstance to you which has agitated my feelings, which require little to stimulate them, when any thing occurs that bears the remotest application to your interests or your honour.

"From others I collect there is a new subject of delay as to the conclusion of a certain business, upon the ground of engaging support against attack likely to be made in Parliament upon your conduct. I own I was not prepared, and felt somewhat hurt, to hear that that conduct required a managed defence and a concerted justification. I had ever conceived it such as fairly challenged the applause of the world. I know if it requires such a defence and such assistance, how much ought those who love and respect you to dread the hour of public discussion; instead of rejoicing at the opening of that inquisition, and of how little avail such props would be found to be towards the real support of your reputation. Indeed, my dear Lord, non *tali auxilio*, nec defensoribus: — the anxiety of those near you to provide armour of that kind can only serve to raise the suspicion that there are vulnerable parts which that armour is intended to cover.

"Nothing can give me greater satisfaction than to find I have been too easily alarmed, and that there has been no intentional suspension of that confidence which I feel I deserve, because I am not conscious I have abused it. For many years I have been in the habit of thinking aloud to you; the same habit has for many years given a licence to my pen. The term of life is too short to replace such advantages and such privileges; but I shall not, at your expense, indulge those reflections which naturally rise on the apprehension of such deprivation.

"Believe me, my dear Lord, to be, as much as ever,

"Yours most sincerely,

"CARLISLE."

morning his Majesty was better, and in a few days, with proper precautions, he could be produced in public.*

A.D. 1801. March 7. The King's conduct on his recovery.

When his recollection returned to him, he inquired of the Duke of York "what had passed—if any resignation had taken place?" The Duke said, "None could without his Majesty's leave." "Has the Chancellor resigned?" asked the King. "No, Sir," said the Duke: "he never will give the seals into any hands but yours." This pleased the King, who ordered Dr. Willis to go to Lord Loughborough to say "he was recovered."

Lord Loughborough's suspense on Pitt agreeing to give up Catholic emancipation.

After making up his mind to submit to fate, the poor Chancellor was again doomed to feel the cruel pangs of suspense before he was consigned to the gloomy calm of despair. The King, in directing Dr. Willis to speak or write to Mr. Pitt, said, "Tell him I am now *quite* well, quite recovered from my illness; but what has *he* not to answer for, who is the cause of my being ill at all?" Mr. Pitt professed to be much affected, and as he had been deeply blamed by several of his associates for the manner in which he had wantonly broken up a strong Government, and he himself felt some repugnance to the loss of power, he actually offered to give up Catholic emancipation.

In consequence a negotiation was opened for restoring all the outgoing Ministers to the offices which they had held. Loughborough again believed that the Great Seal was his own, and flattered himself that Pitt, after this humiliation, would be more meek and conciliating. With these feelings he wrote the following letter to the King:—

Lord Loughborough's letter to the King advising that Mr. Pitt should be allowed to remain Minister.

"Upon a most anxious consideration of the papers your Majesty was pleased to intrust to the Chancellor's perusal he cannot abandon the hope that it is still possible to avert the incalculable mischief which would ensue from Mr. Pitt's withdrawing from your Majesty's service.

"That hope arises from the terms of Mr. Pitt's first communication to your Majesty, proposing to lay aside for the present the

* It was this cure which fixed upon Mr. Addington the nickname of "the Doctor," and gave rise to Canning's jest against him as being one of the "Medici."

discussion of that important question, which never has been brought forward without mischief. An apprehension that an Administration known to be divided on any essential point would appear to have less stability than the exigence of the times requires, seems to have occasioned the second note. There is much force in that consideration. But the remedy is easy, though the generosity of Mr. Pitt's mind would not allow him to suggest it.

"It is far from his intention to intimate the possibility of any relaxation of that opinion which your Majesty most conscientiously has adopted; but, as the discussion of the question at present is in no respect necessary, and in every respect dangerous in the present very arduous and difficult crisis of public affairs, he cannot think it impossible, on a view of the correspondence your Majesty has been pleased to intrust to him, to avert the incalculable mischief which would ensue upon Mr. Pitt's withdrawing at this time from your Majesty's service.

"The difficulty which Mr. Pitt seems in his last note most to apprehend from his continuance in office for any time after a difference on what he deems an essential measure, which could not be concealed, is the want of confidence in the permanence of his Administration which would ensue if he continued to act with a divided Cabinet. That opinion appears to me well founded. An essential difference of opinion amongst your Majesty's confidential servants weakens Government, even when it is not known to which side your Majesty inclines. Until this unfortunate occasion I have never differed with Mr. Pitt. If the question on which I could not accommodate my opinion frankly declared to what at last appeared to be his, I had determined to request your Majesty's permission to retire. Had I felt any reason to suppose at the last communication in Cabinet on the 28th of January, or at a private conversation the day preceding, that his mind had been so made up on the subject as to admit no farther discussion on the proposition itself, or on the modifications of which it was said to be susceptible, I should have apprised him of my intention to remove any obstruction which my remaining in office could create to his making the experiment, by requesting your Majesty's permission to withdraw from a situation in the law that gave me more consequence than my single vote and opinion could claim.

"I have now humbly to beseech your Majesty so to dispose of me — which would be a sufficient indication that there exists no opposition in your Majesty's councils to prevent the trial of the public opinion on the question whenever it shall be brought

forward, which I hope and trust will be postponed to a less agitated period than the present. In this and whatever other alterations Mr. Pitt should think expedient to countervail the rumours of the day, I most humbly, but most earnestly, entreat your Majesty to acquiesce for the vast object of maintaining the external consequence and internal tranquillity of your dominions and, in truth, of the whole habitable world.

But Addington, who had just tasted the importance of the premiership, was by no means disposed to give it up; and Pitt and Dundas still thought there would be a great advantage in some one else submitting to the disgrace of making a peace;—after which they might displace him at pleasure.* So the attempt at restoration proved abortive, and Lord Loughborough was again disappointed. Mr. Addington had intended, on the formation of the new Government, to offer him the office of President of the Council.† The reason why this arrangement did not take place has not been fully explained—but probably was the secret dislike of him still cherished by the King, who, we shall see, would not even permit him to have a seat in the Cabinet. Some have said that Lord Loughborough, stung with resentment at the loss of the Great Seal, spurned at an office of inferior dignity. But I believe that if such an offer had been made to him, it would have been readily accepted. As Ex-chancellor, he could not look forward to the melancholy pleasures of opposition, the Whigs seeming for ever annihilated, and strong personal objections existing to his rejoining their body. Indeed he had contracted so great a passion for being connected with the

* "Dundas pretended to be eager for returning to office, and for throwing Addington overboard, if he would not be satisfied with a subordinate place; 'but,' he said, very unadvisedly, probably unintentionally, 'if these new ministers stay in and make peace, it will only smooth matters the more for us afterwards.' This betrayed a good deal. . . . . The impression the whole of this taken together leaves at this moment is, either that Pitt is inclined to let this Ministry remain in office long enough to make peace, and then turn them out, or that he, &c. mean and wish to keep the government of the country in their own hands. That, if they can, they will try to be *entreated* by the King to do so; and if this does not succeed, they will gratify their pride another way, by vapouring on the sacrifices they are ready to make for the good of the public. The whole is a very sad story."—*Lord Malmesbury's Diary*, iv. 39 40. 43.

† Life of Sidmouth, vol. i.

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Lord Loughborough to retire with an earldom, and a pension of 4000*l.* a year.

Court, that I am not sure whether he would have refused to walk backwards in the presence of the King, carrying a white wand, as a lord of the bedchamber. — It would appear that, upon due deliberation, Mr. Addington, Lord Eldon, and the King entertained no confidence in the sincerity of the intolerant principles which he now professed, and were resolved entirely to get rid of him. — They behaved to him, however, with great courtesy, and as a *solatium* for the loss of office, they conferred upon him an earldom, descendible to his nephew, and a pension of 4000*l.* a year. *

Mysterious circumstance of Lord Loughborough continuing to hold the Great Seal after the change of Government.

It is a mysterious fact, that although the Government was changed on the 10th of March, Mr. Pitt and his other outgoing colleagues giving up their seals on that day, and their successors immediately kissing hands, — the transfer of the Great Seal did not take place till the 14th of April following. I can only conjecture that from the King having several fresh paroxysms of his disorder, the prudent Eldon had still great misgivings as to his Majesty's recovery; for when he had actually received the bauble into his keeping, he declined giving up the office of Chief Justice of the Commons Pleas during several weeks following, for the avowed reason that if the royal malady returned in an aggravated degree, he might "fall between two stools." †

* This was the first pension granted under the Act giving retired allowances to Ex-chancellors. Till then they relied upon tellerships, or other sinecures and reversions.

† Twiss's Life of Eldon, ch. xvi. — Lord Malmesbury, impartially and indignantly reviewing the conduct of the two sections of the Tory party at this time, — the one led by Mr. Pitt, and the other by Lord Loughborough, — says: "Amongst each there is little doubt that many acted from principle and conscientiously; but it is also, I fear, not without some degree of truth, that others are to be found who had their own private interests in view, or who acted in order to gratify their private resentments, or promote their ambitious views; and these men, let them be who they will, may be considered as the most consummate political villains that ever existed. They ought to be held in execration by the country, and their names handed down to posterity with infamy, for they will have been the first cause of the destruction of the intellects or life of a Sovereign, to whose kingly virtues, and to whose manly and uniform steady exertion of them during a reign of forty years, this country and every subject in it owes the preservation of its liberties, and every thing that is valuable to him." — *Diary*, vol. iv. 15. However much we may lament the King's resistance to the liberal policy of his Minister, it is impossible not to admire his constancy, and to sympathise with his sufferings on this occasion. At the commencement of his illness, he read his coronation oath to his family — asked them whether they understood it — and added, "If I violate it, I am no longer legal Sovereign of this country, but the crown falls to the House of

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March 20. Lord Loughborough's speech on "the state of the nation."

Lord Loughborough actually presided as Chancellor on the woolsack two months after he was virtually out of office. During this interval one very important debate took place, on Lord Darnley's motion for a committee on "the state of the nation;" and he then made his last great speech in Parliament. We are told that on this occasion he summoned up all his ancient energy, and had considerable success; but the printed report of what he said is exceedingly defective. He seems to have taken a masterly view of our contest with France, and of the position in which the nation then stood, and to have been particularly happy in defining and supporting the belligerent right to search neutral vessels, —on which he declared that all our naval greatness depended. The Whigs remained equally prostrate as when Pitt was minister, — dividing only 28 against 115.*

Q. Ought a woman divorced for adultery to be permitted to marry her paramour?

On a subsequent day Lord Loughborough left the woolsack, and spoke on the question which then greatly divided public opinion, — "whether, where a wife is divorced for adultery, marriage should be permitted between her and her paramour?" Against all the arguments arising from compassion to the woman, and the fitness of punishing the man by the understood obligation that he must repair, as far as possible, the honour of her whom he has seduced from the path of duty, the Chancellor sternly maintained that such marriages were contrary to religion and morality, and ought to be forbidden in England, as they are in Scotland and most other protestant countries. — On his suggestion a standing order was made, which is still in force, that no divorce bill shall be introduced into the House of Lords without a clause forbidding such a marriage; — but the clause has always been struck out by the House of Commons, and the Lords have acquiesced in the amendment.

Meanwhile, there being rumours afloat that Lord Loughborough had been acting unfairly in the late crisis, — had abused the King's ear, — and had betrayed his colleagues, —

Savoy." Recovering his recollection, partially, after one of his paroxysms, he said, "I am better now, *but I will remain true to the Church.*"

* 35 Parl. Hist. 1199. 1203.

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he wrote and circulated among his friends the following explanation of his conduct: —

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Lord Loughborough's justification of his conduct in these transactions.

"The only period in which, from the time of my entering into office, I had been absent from the correspondence amongst the persons principally concerned in the public business, was in the course of the autumn of 1800. Obliged by the duty of my own office to a constant residence in town, except in autumn, I had during that season never removed farther than Tunbridge Wells, or the coast of Kent, each of which brought me nearer to Mr. P. and D., who lived together, than if I had remained at Hampstead, and of course placed me in the way of knowing all that was passing, as well regarding the external as internal business of the State.

I was not conscious of any reserve towards me; believed the communication to be perfectly frank; and, being naturally indifferent to penetrate into any details of business, had not the least suspicion that there could be any reserve observed towards me on any great measure. . . . . . . In the autumn of 1800 I went early, and without any particular occasion to require my presence, to Weymouth, where for two or three years successively I had been obliged to go on public business, and had staid for a few days each time. It was not my intention to have remained here long; but the King seeming to desire that I should remain some time, and having the goodness to remark that the air and the bathing agreed with me, and his Court being so small that even the addition of my niece and of Mr. N., who was ready to join our party, was not indifferent, I decided to remain there during H. M.'s residence.

"Mr. Windham and Mr. W. were there on my arrival, who also prolonged their stay on the same grounds.

"Soon afterwards it became necessary to hold a Council at W. for the meeting of Parl^{t}., and the presence of W. and myself was a convenient circumstance.

"The D. of P. came down for that occasion, and returned immediately. In a few days after his return, a messenger arrived with a minute of the Cabinet (of which there were very few men in town), the purport of which was not very agreeable to the K.'s ideas, and still less so to W. . . . . .

"This despatch was followed the next day by a private letter from Mr. P. to me, explaining the grounds of the former despatch. I had had the good fortune to check the first emotion of disapprobation that the minute had produced, and to obtain the return of

a moderate answer; that which was first written being (not destroyed) but withheld. The sequel of that business made it unnecessary to send it, as the state of affairs had changed.

"On this occasion my presence had been of some use to the easier conduct of public business, on a point which, had all the King's servants been in a situation to have consulted together, seemed very likely to have produced a rupture; for D., who was at Ch., wrote to me a very warm letter, much irritated against the measure that had been taken, and in a degree reproaching me for the assent he supposed I had given to it. My answer explained to him the grounds on which I had not assented, but acquiesced, and prevented an absolute dissent; which must have led to an absolute separation of at least one servant. He, however, had felt so strongly the objection, that he thought it necessary to enter a formal protest against it, after the subject was in effect gone past.

"There happened about the same time one other incident, neither object nor detail of which I distinctly recollect, in which my immediate intercourse prevented a like incident of quick disapprobation.

"In the last days of September, about the 27th as I recollect, I read a letter from Mr. P., who had kept up a correspondence with me, desiring me to return to town for a meeting on the 2d of October, with L. C., who wished before his return to Ireland, to be instructed what language he should be authorised to hold with respect to the Catholics. This letter accompanied a box of papers containing L. C.'s exposition of the point in question.

"Not having prepared to leave W. so abruptly, it was impossible for me, especially as the box and letter had been delivered to me by the messenger in the view of the King, not to inform H. M. of the occasion of my sudden departure, and I thought the best way was to show him the letter, in which there was nothing to be kept back.

"The knowledge that a subject of this nature was in discussion, I was aware would occasion some anxiety in H. M.'s mind, and I therefore determined not to open the papers for the short time I should stay at W. — H. M., as I expected, did not fail to talk to me earnestly on the subject, which he supposed might be treated at the appointed meeting. I evaded the discussion by the excuse of not being able to enter upon the perusal of the papers, and confined myself to say, that I was persuaded nothing of material importance could be settled at such a meeting, nor without

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consulting L. C., who was soon expected in this country, and that for my own part, I must think that a subject of so much extent as the general description of it in the letter indicated, could not be brought in many meetings to any certain conclusion.

"H. M. continued evidently anxious during the time I remained, (which he retarded for a whole day), upon this subject, but he permitted me to retain the same reserve.

"I arrived in town the day of the meeting, 30th September; but having had in my journey ample time to consider the papers, and digest my opinion on them, I felt myself sufficiently prepared with my own opinion.

"Except Lord L., Mr. D., and Lord W., all, I think, were present. Lord C. there also. The business was slowly opened, and for some time loosely discussed. I then stated shortly, but earnestly, my own opinion decidedly against the general question; proposing a measure as to tithes which had been thought of in this country, and not objecting to the idea of a pecuniary aid to the clergy, Catholic or Dissenting, but much more limited in its extent than the plan proposed, referring to a paper I had formerly given, before the Union was in view, to Mr. P., on that particular point.

"I rested much on the different state of the questions to be discussed since the Union, and before that event, — that now, the churches of both clergies being consolidated, no point could be made in one that would not of necessity affect either as to tithe, or any other part of the ecclesiastical establishment, and the security of the Church of England was necessarily involved in that of Ireland, and the interest of the State was the same in both; that a change here would be most pernicious, and could not be attempted without the utmost hazard, especially as no one could be ignorant how totally adverse it must be to the K.'s opinion, founded on a high sense of religious obligation. The topics I urged did not seem to be new to any one, nor were they much combated by any except Lord G. I rather judged that they were strongly felt by Mr. P.

"The plan I opened with regard to tithe met with very general concurrence, and I undertook to deliver it in writing. The result of the meeting was pointed and express, that Lord C. should be authorised to say, that some regulation with regard to tithe which might be adapted to the peculiar circumstances of Ireland was in contemplation, that there was also a disposition to give some pecuniary aid to the clergy, as well of Catholic persuasion as of Dissenters, the extent and mode of which required

more ample information to be gained from themselves. And as to the question of further indulgence to the Catholics, it was a subject of so deep and serious consideration that no assurance on that subject could be held out to them, the Administration not having formed any opinion for or against their expectations.

"From a letter of Lord C., after his return to Ireland, which came afterwards into circulation, there is reason to think that he had understood and followed his instructions.

"It was particularly my part to deliver in the plan with respect to tithe, which consisted in a bill drawn by Mr. J. Heath, which two or three years before I had communicated to some of the Bishops and left with the Archbishop, who all seemed to approve the idea, but thought the time unfavourable for the proposal.

"I sent the next day to Mr. J. Heath for a copy of it, and about two days afterwards transmitted it, with an explanation, to the Secretary of State's office for circulation.

"I then, pursuing the other parts of the subject, drew up a minute of my opinion upon them at considerable length; one copy I sent to Mr. Pitt, the other to the D. of P.; and though I have no note of the date, I think this must have been about the 20th of October, perhaps later, for it took up some time, and prevented my going to Bath.

"The D. of P. at first took it to be a private communication, and desired to take a copy of it. I informed him, that I meant it to be official and to be put in circulation, wishing also that the circulation might be extended to Lord Clare, who was then expected in England.

"About the opening of the session of Parliament, the King asked me one day in the course of my attendance on him, what had been the result of the council for which I had been called to town. I said, nothing more than to encourage an idea I had formed in conversation with Mr. J. Heath in regard to tithes, and to hold out some hope of pensions to the Catholic and Dissenting clergy, neither of which were at all settled. He observed, these were not dangerous measures in themselves, and might be good or bad, according as they should be adjusted. But had nothing been settled as to the Catholic question? I assured him, nothing had been settled on that question, though it had undergone some discussion. He seemed desirous to know how it had been treated; and I said, so loosely, that I could not pretend to know any one's opinion but my own, which I had stated in writing and put in circulation. He then expressed a desire to see both that and my project with

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respect to tithes; in consequence of which I sent a copy of each to the office of his Majesty. At the next levee he was pleased to tell me, that I had not convinced him, but he had always been of the same opinion with regard to the Catholic question, but he thought I had reasoned it fairly, and as to the other subject he should have no objection if the Bishops had none.

"This is all the intercourse I had with H. M. on this subject since the year 1795, when by his express command I delivered my written answers to some questions he was pleased to put to me upon this subject, which answers fell so short of the high sense of the obligation H. M. felt to be imposed upon him, that they were rather displeasing to him."*

I abstain from the invidious task of commenting on this document.

Lord Loughborough delivers up the Great Seal, and retires.

At last the inevitable hour arrived to Lord Loughborough when, giving up the Great Seal, he was to be *civiliter mortuus*. This sad catastrophe happened at St. James's Palace on the 14th of April. George III. affected to treat him very courteously, and thanked him for his very valuable services; but there was an alacrity in his Majesty's manner, and a twinkle in his eye, which, in spite of all attempts at concealment, betrayed his Majesty's high satisfaction at throwing off a man whom he never trusted, and getting a Chancellor whose sentiments he knew to be sincerely and steadily in accordance with his own.

* Rossl. MSS.

CHAPTER CLXXV.

CONCLUSION OF THE LIFE OF LORD LOUGHBOROUGH.

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A.D. 1801.

Lord Loughborough's attempt to continue a member of the Cabinet.

OUR Ex-Chancellor, to the great surprise of the new Premier, retained his key of the Cabinet boxes, and continued, unsummoned, actually to attend the meetings of the Cabinet. He was treated on these occasions with respect; but he at last received the following formal dismissal: —

Letter to him from Lord Sidmouth, forbidding him to attend the meetings of the Cabinet.

"Downing Street, April 25th, 1801.

"MY DEAR LORD,

"A misconception appears to have taken place, in consequence of which I am led to trouble your Lordship from various considerations, and particularly from a sense of duty to the King. I have reason to believe that his Majesty considered your Lordship's attendance at the Cabinet as having naturally ceased upon the resignation of the Seals, and supposed it to be so understood by your Lordship. Much as I should feel personally gratified in having the benefit of your Lordship's counsel and assistance, I will fairly acknowledge to you, that I did not offer to his Majesty any suggestion to the contrary; and, indeed, I must have felt myself precluded from doing so by having previously in more instances than one expressed and acted upon the opinion, that the members of the Cabinet should not exceed that of the persons whose responsible situations in office require their being members of it. Under these circumstances, I feel that I have perhaps given way to a mistaken delicacy, in not having sooner made the communication to your Lordship; but I am persuaded you will see that I should be wanting in duty to the King, and in what is due to yourself, if I delayed it beyond the time when a minute of Cabinet with the names of the persons present must be prepared in order to be submitted to his Majesty.

"I hope your Lordship will give me full credit for the motives by which I can alone be actuated upon this occasion, as well as for the sincere sentiments of esteem and regard with which I am, my dear Lord,

"Your Lordship's most obedient and faithful servant,

"HENRY ADDINGTON." *

* Rosl. MSS.

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1801–1804.

It would have been well for the dignity of Lord Loughborough's character if he had died on the day of his resignation. The world would then have said, that if his life had been prolonged,—after he was freed from the toils and cares of office, he would have devoted his great abilities to the task of reforming and improving the laws of his country, and that the literary ardour which had burned so bright in his bosom when he was the associate of David Hume and Adam Smith, being rekindled, he would have rivalled Clarendon in handing down to posterity a brilliant history of the times in which he lived. Unfortunately he survived; and thus his real destiny is recorded:—"A still more crafty successor obtained both the place he had just quitted in the King's service, and the place he had hoped to fill in the King's favour; he was made an Earl; he was laid on the shelf; and, as his last move, he retired to a villa remarkable for its want of all beauty and all comforts, but recommended by its near neighbourhood to Windsor Castle, where the former Chancellor was seen dancing a ridiculous attendance upon Royalty, unnoticed by the object of his suit, and marked only by the jeering and motley crowd that frequented the terrace.* For three years he lived in this state of public neglect, without the virtue to employ his remaining faculties in his country's service by Parliamentary attendance, or the manliness to use them for his own protection and aggrandizement."†—There is some rhetorical exaggeration in this statement; but it is substantially correct. By a reference to the Lords' Journals, we find that the Ex-Chancellor was tolerably regular in attending the House during the remainder of the session of 1801 ‡, and during the

He becomes a hanger on at Court.

* I have been informed by my friend and former colleague, Sir William Hore, who occupied this villa with his family during a long vacation, that although it is not remarkable for picturesque beauty, it is very spacious and commodious;—and according to the testimony of Miss Cotes and others, George III., without any real regard for the Ex-Chancellor, always behaved to him with courtesy and seeming kindness.

† Lord Brougham's Statesmen, i. 86.

‡ Having resigned the Great Seal on the 14th of April, he was present on the 18th, 20th, 21st, 22d, 23d, and 27th, as "Dᵉ. Loughborough." On the 28th he was introduced as "Earl of Rosslyn," and he appears in the roll as "Cᵗ. Rosslyn" about as often as any Earl not in office. In 1804 he was present ten times in March, five times in April, four times in May, once in June, and eleven

His subsequent inglorious career in the House of Lords.

sessions of 1802, 1803, and 1804, although he took very little part in its proceedings. He did not at all assist in judicial business, as, without any open quarrel, there was no cordiality between him and his successor; and he merely, like the great bulk of our hereditary legislators, came to lounge in the House a short time before dinner, that he might inquire after news, — when he had not any more lively occupation. He now and then spoke a few sentences in a conversational tone, but never aimed at an oration. Having once or twice heard him on these occasions, I remember being rather at a loss to conceive how he could have been the formidable opponent of Dunning and Thurlow, of Fox and Burke, — although it might be discovered that he had become unnerved by listlessness, and that, if excited, he might still have been capable of great things.

1802, 1803.

He first opened his mouth as Ex-Chancellor to express his approbation of Lord Thurlow's doctrine, that a divorce should be granted on the petition of the wife for the adultery of the husband with the wife's sister.*—When the bill was brought in to indemnify those who should be sued for any thing done under the "*Habeas Corpus* Suspension Act," he took merit to the late Administration for having saved the state, and boldly justified their habit of employing spies and informers. † — He supported against Thurlow the bill introduced when the Reverend John Horne Tooke was returned to Parliament, to prevent a priest in orders from ever again sitting in the House of Commons,—and with some historical research he showed that this regulation was according to ancient usage. ‡ — The articles of the peace of Amiens coming on to be debated, he censured them, but chiefly confined his objection to the omission of an article to recognize the honour to which the British flag was entitled in the narrow seas — "an important right, which implied our dominion of the sea, and the maintenance of which warmed the heart of every

times in July — the last of these being the day of the prorogation; and I do not find his name afterwards in the Journals; so that I presume he never again appeared in Parliament.

* 35 Parl. Hist. 1433. † Ib. 1540. ‡ Ib. 1549.

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British seaman." * — When hostilities were recommenced, he supported the Government, saying that Buonaparte's rudeness to Lord Whitworth was a sufficient cause of war, and that his whole conduct since he signed the treaty had been a uniform system of arrogance, insult, and injury.†—In 1804 he made a few unimportant observations on the proceedings against Judge Fox ‡, — on the mode of maintaining the London clergy §, — and on the Insolvent Debtors' Bill.‖ — He never again spoke in the House. Such is the inglorious termination of his Parliamentary career!

He is treated with neglect by the new Administration. Oct. 1801.

He appears to have been treated with neglect by all parties — which is not much to be wondered at, considering the little pains he took to preserve his importance as a public man. The Duke of Portland, the President of the Council, having heard of his complaints of the slights he experienced from the Government, and of his saying that "he now knew nothing except what he read in the newspapers," became alarmed lest he might actually join the Opposition, and thus wrote to Lord Chancellor Eldon: "The most perfect means should be taken to put an end to the sort of language which is held by Lord Rosslyn — to remove from him all cause of complaint upon the ground of want of attention, or shyness, on the part of those who compose the Administration. With permission, I cannot help thinking that the station you hold gives you a particular title to commiserate and consult with him; and excuse me for adding, that I am very anxious that the suggestion I have ventured to throw out respecting Lord Rosslyn may be approved and adopted by you."

The Duke of Portland's compassion for him.

But it is not wonderful to see him so fallen as to be a fit object for the commiseration of his former friends, when we find that his great object of ambition now really was the personal notice of the Sovereign. We have observed that as he became alienated from Mr. Pitt he enlisted himself in the band of "King's friends." His Majesty, who, notwithstanding his apparent bluntness, had considerable powers of dissimulation, thenceforth treated him with such seeming confidence as to lead the wary Scotsman into the delusion

* 35 Parl. Hist. 723. † Ib. 1511. ‡ Parl. Debates, vol. xi. 925.
§ Parl. Debates, vol. xi. 1109. ‖ Ib. 1130.

that he was a special favourite. Even when superseded by Eldon, the King still induced him to believe that this was only for political reasons, and that personally his Majesty was affectionately attached to him — having taken an opportunity to tell him that "the Queen, likewise, found much pleasure in his society, and that they both desired to see him as much as possible at Court." This conversation, which he took *au pied de la lettre*, was the cause of his hiring the ugly villa of Baylis, near Slough, that he might be near Windsor*, and he did frequently throw himself in the way of the Royal Family while they were resident there. He likewise followed them to Weymouth, where they spent a considerable part of every summer, and was greatly delighted to be noticed by them on the Esplanade, or to be invited to join their excursions on the water. In August 1801, from Weymouth, he writes a letter to Lord Auckland which, after touching on some private matters, and showing that he was on very familiar terms with the Queen and the princesses, thus proceeds: "I can with perfect satisfaction confirm to you all that you may have heard of their Majesties' perfect health. The King, I think, has at no time when I have had the means of seeing him every day, and often all the day, appeared to be in so steady a state of health. He might at times appear, to those who have always seen him in high spirits, to be rather low; but the case really is, that his manner is much more composed, and he is always ready to enter into conversation when it is going on, though he

His residence at Baylis, near Windsor.

His attendance on the King at Weymouth.

* He likewise had a *farm* at Baylis, which he seems to have bargained for with great deliberation. I find the following memorandum in his handwriting: —

"1. What should be a fair rent?

"2. How far, at a rent of 40*s*., parts might be underlet?

"3. What number of horses would be necessary for the farm? Expense of their keep?

"4. What number of men? Whether two to each team sufficient for all the work, as ploughing, &c.?

"5. What the allowance to bailiff?

"6. What ought to be the produce to cover rent, taxes, tithes, and the charge of management?"

Among his papers are very minute accounts of the farm, the number of labourers employed, and the operations of each day throughout the year. — *Rossl. MSS.*

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does not always start it. He is become also more moderate in his exercise, and admits that it is possible to be fatigued. — Public events seem at present to give no occasion for uneasiness, and I trust they will continue in such a state as not to ruffle his mind, the composure of which is the great point on which the fate of our country depends. The weather here is delightful for sailing, but rather warm for any other exercise." *

May, 1804. Pitt's restoration to power.

I do not find that he took any part in the ministerial crisis which was terminated by the resignation of Mr. Addington. After Mr. Pitt's return to power, he neither actively opposed nor supported that minister, but continued more sedulously than ever to cling to the Court. Whether he thought that, in party vicissitudes, which were likely to arise, the King's favour might restore him to office, or he considered the King's favour his supreme and ultimate good, I know not; but thus he continued to trifle away his existence: — when the royal family were in London, residing at a villa which he had near Hampstead, — fixing himself at Baylis when the Court was at Windsor, — and following in their suite when they removed to the sea-side.† In the autumn of 1804, after his return

Court of George III. at Weymouth.

* In a letter from Weymouth, dated Sept. 1800, he gives an interesting picture of the Court of George III. there. Having discussed the question on which his opinion had been asked, "Whether, after a divorce obtained collusively in Scotland, a marriage of one of the parties would be valid?" he says, — "The course of life at this place has agreed so well with me that I wish to prolong my stay, if I should not feel it a necessary duty to return to London, where I am afraid the Lord Mayor is proceeding like his predecessor in 1780, and will produce similar excesses. I was the only person at sea this evening without a great coat, and without a wish to have had one. The great advantage of the attendance here is the constant movement in the open air, and the short meals. When I arrived, I was horribly fatigued by the pedestrian exercise; but I am become a very stout walker. — A continental peace would be very desirable; but, in truth, no peace which could be expected in the present state of things would amount to more than an armistice."

† I have received an amiable and interesting explanation respecting Lord Loughborough's retreat in a letter from his niece, Miss Cotes:—"19th Nov. 1846. — I am sorry to say that my aunt, Lady Rosslyn, being in the constant habit of burning all letters, I have no written documents to produce that would throw any light upon Lord Rosslyn's life. However, I will state my own impression, as derived from my recollection of what passed at the period to which you refer. From all I saw and heard, I believe that George III. was at all times most gracious and kind to Lord Rosslyn, and particularly so at the time of his resigning the Seals, and during the remainder of his life. Lord Rosslyn was sincerely attached to George III.; and this feeling was probably one great inducement to him, after his retirement from office, to exchange his villa at Hamp-

from Weymouth, where, as usual, he had been gratified by walking with his Majesty on the Esplanade, and accompanying him in little trips to sea in the royal yacht, he was seized with a severe fit of illness in London, but he soon rallied, and, by the advice of his medical attendants, he went to Baylis, where the air is supposed to be very salubrious. Here, his recovery being soon completed, he continued his usual mode of life,—frequently paying his duty at the Castle, kindly receiving his relations under his roof, keeping up a friendly intercourse with several agreeable families in the neighbourhood, and amusing himself with all the new works of any merit which issued from the press. His constitution, although not robust, seemed unbroken, and his friends hoped that he might reach extreme old age.

His illness in the autumn of 1804.

His recovery. His mode of life.

We are told (no doubt on authority which appeared satisfactory) a fact which would be very curious if it might be relied upon: "that his Scotticisms and his vernacular tones returned as his vigour was impaired in the decline of life; showing that it was all the while an effort which could not continue when the attention was relaxed and its powers enfeebled."* But his niece, an Englishwoman, who lived with him under his roof during his retirement till the hour of his death, says: "The statement by Lord Brougham as

Q. whether his Scotch dialect reappeared in his old age?

stead for the place he took near Windsor, from whence he had frequent opportunities of paying his duty to his Sovereign, by whom, as well as by all the royal family, he was always received in the most gracious manner. To a man naturally of a sociable and cheerful disposition, there might also be some inducement to this change in the pleasure which the intercourse with the principal families in the neighbourhood afforded; for they courted his society, and respected and esteemed his character, and he was happy to co-operate with them whenever his health permitted. His kindness to his relations was invariable, and his house was at all times open to them, and to friends of all ages, who were welcomed with cheerfulness; and no one could be in his society without deriving some information from his superior mind, the powers of which were never weakened to the last day of his life, though, from severe bodily illness, he was in great measure removed from public life.

"In the autumn of 1804 Lord Rosslyn was for some weeks at Weymouth, when he was continually in the society of the royal family, and attended his Majesty in his almost daily sailing excursions, as well as at the parties on shore, in which all his family were included. Their Majesties were so gracious as to admit me to the sailing parties; and in so confined a sphere I had more favourable opportunities of witnessing his Majesty's manner than I could otherwise have had, and his behaviour was at all times such as to give me the impression that he had a great regard and esteem for Lord Rosslyn."

* Lord Brougham.

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to Lord Rosslyn's *Scotticisms and vernacular tones*, I can safely affirm to be incorrect; and I believe any one who conversed with Lord Rosslyn in his latter years (of whom some few are still alive) would bear testimony both to his intellects being perfectly clear, and his language so purely English, that no one would have perceived him to be a Scotchman."*

He was now to receive a sudden summons from the Angel of Death. On the last day of the year he was at a party given by their Majesties at Frogmore,—where, meeting with a very gracious reception, and being consequently in high spirits, he stayed till a late hour. Next day, being new year's day, 1805, while sitting at table, seemingly in his usual health, his head dropped on one side, he fell from his chair, and it was found that he was struck by an attack of gout in the stomach. He never spoke again, and he expired in a few hours, to the inexpressible grief of his family.

George III.'s saying when he knew for certain that Lord Loughborough was dead.

I should have been glad if I could have omitted or contradicted the following anecdote, but it has been too widely circulated to be suppressed, and it seems to rest on undoubted authority: Intelligence being carried to George III. early next morning of the sudden death of his "friend," the Monarch, with characteristic circumspection interrogated the messenger, as to whether this might not be a false report, as he had seen the Earl of Rosslyn himself so recently in perfect health; and the messenger having declared that the Earl had certainly died during the night of gout in the stomach, his Majesty was graciously pleased to exclaim, "Then he has not left a greater knave behind him in my dominions."†

* Letter from Miss Cotes

† It is related that when Thurlow was told this remark of the King, he vented his spleen against both parties by observing, with an "oath,'I perceive that his Majesty is quite sane at present."

The whole story is utterly denied by Miss Cotes, who thus feelingly expresses herself: — "I think it quite incredible that George III., whose benevolence of heart and kind feeling are admitted even by his enemies, could have made such a speech as that recorded at the end of Lord Brougham's life, on being told of the sudden death of an old and faithful friend, whom he had seen in his house not twenty-four hours before, or that so open and warm-hearted a man as his nephew, Henry Wrottesley, could have refrained from naming it at the time, had such a speech reached his ears, or that he should never at any future time have expressed to any of his own family how much he was shocked at hearing a man, to whom he was most strongly attached, spoken of in such a manner. The extreme improbability of the story is all that I can argue upon, as Mr. Henry Wrottesley was probably the only person who could really know

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His funeral.

His remains, having been removed to his house in London, were deposited in St. Paul's Cathedral, close to those of Sir Joshua Reynolds. Some of his biographers have stated that a monument has been there erected to his memory, with an epitaph to record his virtues, but "the only memorial which St. Paul's contains of this high legal functionary is a flat stone laid over his grave in the crypt, with the following inscription, on which no human eye ever looks, and which is fast becoming illegible:

Inscription on his grave.

"ALEXANDER WEDDERBURN,
EARL OF ROSSLYN,
BARON LOUGHBOROUGH.
Born 13th February, 1733.
Died 2nd January, 1805." *

At the top of a circle inclosing the inscription are his armorial bearings, with the motto —

"Illæso lumine solem."

Such is the information afforded respecting him to those who visit the secluded vaults of our Metropolitan Minster, and this is now with difficulty deciphered.

His character.

I must try to supply the deficiency, — exercising a more impartial judgment than could be expected in a kinsman or a friend. This memoir, I am afraid, may appear to have been already extended to a disproportionate length, and I hasten to conclude it; — but the reader must bear in mind that while the greater part of those who have held the office of Chan-

the truth. I own to me it appears absolutely impossible." Although Miss Cotes's belief is so sincere and so strong, we must recollect that she is not supposed to have been present when the words were spoken, and that they might have been concealed from her on account of her pious respect for the memory of her uncle. I am informed, that they were often mentioned to others by Mr. Henry Wrottesley, to whose testimony she refers. The improbability of the anecdote is lessened by the consideration that George III. had always looked on Lord Loughborough with a considerable degree of suspicion; first, on account of his country, and, secondly, on account of his inconsistent conduct. So early as when he was a law officer of the Crown, his Majesty, in a confidential letter to Lord North, said, "Is Mr. A. G. really running right? I doubt all Scots, and he has been getting every thing he could."

* Letter from a Canon Residentiary of St. Paul's, who kindly made the necessary inquiry for me on this subject; and who adds, — "Of our forty-five monuments within the cathedral, twenty-one are erected to military, and sixteen to naval heroes. The only Judge similarly honoured is one whose ashes are not with us — SIR WILLIAM JONES."

cellor, have either emerged from obscurity at a mature age, or have been consigned to an early tomb, Lord Loughborough was conspicuous on the stage of public life above half a century, mixing with all the most eminent men of two generations,—that he lived to relish the writings of Wordsworth and of Walter Scott, after many years of personal intimacy with Robertson and Hume,—that having exulted in the glories of the first Administration of Pitt the father, he mourned over the calamities of the last Administration of Pitt the son, and that he long continued to fill a great space in the eyes of his contemporaries on both sides of the Atlantic. From his origin he might have been expected to aim no higher than being an "Advocate-depute" or the "Sherra" of a Scotch county; but, striking out a path to fortune unknown to his countrymen, he raised himself to be Lord Chancellor of Great Britain, and an Earl.—I may still be allowed to take a rapid glance at the merits and the faults of a person so distinguished.

Natural abilities.

He received from nature talents of the first order, and, with a longing after the seemingly unattainable, an extraordinary determination of purpose, which enabled him to overcome all the difficulties which obstructed his rise. He achieved greatness, and he might have commanded the respect of mankind. But of public principle he was wholly destitute. Repeatedly going over from the Whigs to the Tories and from the Tories to the Whigs, he has been not inaptly compared to a ship at single anchor in a river, that changes the direction of her prow every time the tide ebbs and flows. Some palliation of his misconduct may be discovered in the political profligacy of the times in which he lived; but, in aggravation, it must be remembered that he had before him in his own profession the example of the virtuous Camden,—amidst temptations and tergiversations ever consistent and true.

His want of public principle.

His changes impolitic as well as unprincipled.

To render Lord Loughborough's worldly prosperity less demoralising, I would observe, that I believe his frequent interested transfers of himself were impolitic as well as unprincipled. With his endowments, had he adhered steadily to

either party, he probably would have filled the same offices, and with more power as well as more credit. If in 1771 he had resisted the allurements held out to him by Lord North, he probably would have received the Great Seal from the Whigs in 1782,—and if he had afterwards remained a stanch Tory instead of becoming a Foxite, it would probably have been soon delivered to him by Pitt, when taken from the wayward Thurlow. At all events, what was this bauble, accompanied with reproaches of treachery, and the suspicions and mistrust and equivocal looks of his new friends, compared to the esteem of good men and the self-respect which he sacrificed to obtain it?

He was deficient in professional knowledge.

I must likewise censure him for not making himself better acquainted with English jurisprudence. He had a very fine legal understanding, and with proper application he was capable of comprehending and expounding the most abstruse questions debated in our courts; but he was contented with the superficial knowledge of his profession, which enabled him, by means of a cursory examination of authorities and a cautious concealment of his ignorance of all beyond what he had got up for the occasion, decently to get through the business of the day. As a judge he was of spotless integrity, and he could deal well with the facts of every case; but he was often obliged to resort to others for those maxims on which depended the most important rights of the suitors who came before him for justice. Thurlow used to say,—"That d——d Scotchman has the gift of the gab, but he is no lawyer; in the House of Lords I get Taffy Kenyon, or some one else who does my dirty work, to start some law doctrine in such a way that the fellow must get up to answer it, and then I leave the Woolsack and give him such a thump in the bread-basket that he cannot recover his wind." Yet Loughborough, by his "gift of the gab," sometimes seems to have had the best of it. Lord Eldon used to relate that on one occasion when the Chief Justice of the Common Pleas was speaking with considerable effect on a law point which Thurlow had not sufficiently studied, the latter, as he sat on the Woolsack, was heard to mutter, "If I were not as lazy

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as a toad at the bottom of a well, I could kick that fellow Loughborough heels over head any day in the week."*

Censure upon him for neglecting and opposing all law reform.

Still deeper blame is to be imputed to Lord Loughborough, for not only omitting to do any thing material, during the forty years he sat in Parliament, to improve our laws, but for opposing the efforts which now began to be made by others for this great object. Having effected nothing by "Orders" to reform the abuses of the Court of Chancery, the only law bill which he ever introduced, besides that already mentioned, to prevent the dangerous accumulation of property by means of fantastical wills, was the bill requiring, under the pain of nullity, all annuities to be registered, unless secured on freehold estates. The purpose was to check the ruinous practice of expectant heirs borrowing money on extravagant terms by granting annuities, and thus evading the statutes against usury; but the measure was ill-framed, and has fallen into desuetude.† When a bill for

* Thurlow, retaining the recollection of the wounds he had received in conflicts with this formidable antagonist, when told by Lord Lauderdale of his intention to make an attack on Lord Loughborough, then Chancellor, said to him, "You had better not, sir: he will come over you with his *cold tongue*."

† He likewise caused to be brought in the Act by which a pension of 4000*l.* a year was provided for a retired Chancellor. Mr. Pitt, by the following letter, proposed that he should take a sinecure like his predecessors: —

"Holwood, Sunday, March 2d, 1794.

Letter from Mr. Pitt proposing that Lord Loughborough should take a sinecure.

"My dear Lord,

"I wish to submit to your Lordship the idea of an arrangement on which I shall be happy to know your sentiments. If it strikes you as it does me, it will be a great satisfaction to me to see it carried into execution. An opportunity occurs of opening the office of Chief Justice in Eyre, now held by Mr. Villiers, the salary of which, as it stands (but subject to some possible deduction), is about 1900*l.* per annum. The office appears to me to be of a description which might very properly be held with your Lordship's present situation, and there is nothing to prevent an additional pension being granted out of the Civil List, dependent on the event of your ceasing to hold the Great Seal, which might make the amount, in that case, about equal to the salary of a tellership, which has been so frequently the provision for your predecessors. If your Lordship approves of this mode, it appears to be liable to no difficulty, and would render any idea of an application to Parliament unnecessary. You will, perhaps, have an opportunity of turning this in your mind, so as to let me know your opinion when I have the pleasure of meeting you to-morrow.

"Ever, my dear Lord, sincerely yours,

"W. Pitt."[1]

But he very properly objected to the jobbing to which such bargains were apt to give rise; and Mr. Pitt at last agreed in the propriety of a fixed retired allowance for the Chancellor, which has since been extended to all the Judges. — Stat. 39 Geo. 3. c. 110.

[1] Rossl. MSS.

altering the criminal law, which had been drawn up by Mr. Wilberforce, came to the House of Lords, Lord Loughborough threw it out, saying, "I cannot help lamenting that men not conversant with law now-a-days turn law projectors, and in fits of vivacity come forward with raw, jejune, ill-advised, and impracticable schemes for alteration of the mode of distributing and carrying into execution the criminal justice of the country: as Attorney General, I always thought it my duty to check the introduction of every such project. I remember that an offender sentenced to stand in the pillory having lost his life from the fury of the mob, a humane gentleman (Mr. Burke) brought in a bill to make the offence capital, with a view to do away with the punishment of the pillory altogether: but I acted upon the opinion that the Judges were the proper persons with whom alterations in the penal code ought to originate." — He opposed the bill for repealing 25 Geo. 2., which, in cases of murder, subjects the body of the criminal to dissection. "According to my experience," said he, "prisoners hardened in vice, and practised in villany, have stood with a firm countenance during trial, and have even heard sentence of death passed upon them without emotion; but when the Judge informed them that they were to undergo a public dissection, their countenances changed, they grew suddenly pale, trembled, and exhibited a visible appearance of the extremest horror. This sort of exhibition has always made a forcible impression on the minds of the bystanders, and, I have not the smallest doubt, is attended with the most salutary consequences in repressing crime."—He even went so far as to reject a bill to change to *hanging* the punishment of *burning*, to which women were liable for "*coining*," then treated as "*high treason*." "I see no great necessity," said he coolly, "for the alteration, because, although the punishment, as a spectacle, is rather attended with circumstances of horror, it is likely to make a more lasting impression on the beholders than mere hanging; and, in fact, no greater degree of personal pain is thus inflicted, the criminal being always strangled before the flames are suffered to approach her body." But such sentiments reflect

He defends the burning of women for coining.

discredit on the times rather than the individual. When Loughborough was Chancellor, our penal code, having reached its utmost degree of atrocity, was generally defended and approved. All that can be said against him personally is, that on such subjects he was not in advance of his age. Dr. Parr relates the following anecdote in proof of his humanity: "Lord Rosslyn, disregarding the difference of our political sentiments, at my request, gave the fullest effect to my exertions for saving an unfortunate person who had committed the crime for which he was on the point of suffering death, but was guiltless of some aggravations hastily imputed to him, and who, by the diligence, sobriety, and honesty which he has uniformly manifested for the space of twenty-five years from the time of his deliverance, has amply repaid to society the mercy shown to him by the Executive Government." So enthusiastic was the worthy divine, that he adds, "In genius and magnanimity Lord Rosslyn towered above his colleagues."

His brilliant oratory.

It is in oratory that Wedderburn is most to be admired; and I am inclined to think that, while in the House of Commons, he was the greatest debater, for a lawyer, that ever sat in that assembly. More sarcastic than Murray, more forcible than Pratt, more polished than Dunning, more conciliating than Thurlow, he combined in himself the great physical and intellectual requisites for swaying a gentlemanlike mob. His manner was rather too precise, from the pains he had taken with it under Sheridan and Macklin, and from his dread of Scotch phrases or accents; but his voice was powerful and sweet, his eye was full of fire, and, without standing on tiptoe (a vain attempt I have witnessed, to add a cubit to the stature of a little man), the movements of his body were so energetic, appropriate, and graceful, that, like Garrick, he seemed "six feet high." Another circumstance which gave him weight in the House of Commons was, that he always remained true to the colours under which he served,—not seeking by display to gain separate objects, or to gratify personal vanity; but, under just subordination to his leader, he seemed only to consider the interests of the party to which,

for the time, he belonged. Upon the approach of a great debate he took enormous pains to be master of the subject; he prepared in writing some fine sentences, to be opportunely thrown in when replying; and the story went that he even practised before a looking-glass his starts of surprise at ironical cheers, and his looks of complacency when he expected to be favoured with the sympathy of his hearers. Whatever arts he employed, he was always heard with attention and delight; — controlling the sympathies of his hearers, they for a time forgot his political lubricity. Fox, Burke, and Dunning in turn entered the lists against him without gaining any decisive advantage; he could almost make our quarrel with America appear just, and the war to subdue her well conducted. Perhaps the most striking proof of his great rhetorical powers is the position which he maintained in society notwithstanding what might be stated to his discredit. Though much abused behind his back, all were civil to him in his presence — even his opponents, who were influenced by the hope of a compliment from him in debate, or dreaded the keen edge of his sarcasm.

His authorship.

From his articles in the original Edinburgh Review, when a very young man, it might have been expected that he would have gained distinction as an author; but he had not imbibed his friend David Hume's passion for literary fame, and he greatly preferred office, titles, and riches. Lord Commissioner Adam, indeed, says in the Diary which I have before quoted, "he had produced an historical work which never met the light, although he had taken great pains to correct it — a Dissertation on the Reign of Henry II. of England;" — and there is reason to think that he printed anonymously several political pamphlets; but the only publication ever avowed by him was a little treatise which came out in the year 1793, soon after he received the Great Seal, entitled, "Observations on English Prisons, by the Right Honourable Alexander Lord Loughborough, Lord Chancellor of Great Britain." It had probably been written when he was Chief Justice of the Common Pleas, and it contains the result of his inquiries and observations as a Criminal Judge. Cer-

tainly it does him very considerable credit; and it is particularly interesting at the present moment, when so much attention is paid to prison discipline, to secondary punishments, and to the *silent* and *solitary* systems. I think the reader will be pleased with the following extract from it, showing considerable discrimination, much liberality of sentiment, and a terseness of composition suitable to the subject:—"The common prisons were formerly placed in the fortresses, and the comforts of the prisoners less attended to than their safe custody. When houses of correction were first erected, there were no other models for their construction than the gaols, and of course they were formed on a plan to keep the prisoners safely with little attendance, in a narrow space, and with few openings for light or air. The close air and squalid condition of a prison ("*squalor carceris*") were by many considered as the necessary attributes; and even men of respectable judgment have supposed, in the case of debtors, that the filth of the prison was a proper means of compelling them to do justice to their creditors. This prejudice (for it is not entitled to be called reasoning) is no less inhuman than senseless, for it supposes all debtors able, but unwilling, to pay; it afflicts those most who deserve it least—the men of sensibility; and it forgets that habit, with most men, deadens the disgust they feel from the loathsomeness of their situation. What, then, is the remedy to be found for this evil? Work!" He likewise recommends seclusion, adding, "Seclusion does not mean absolute and profound solitude, which ought to be reserved for very serious cases, and applied with due discretion: it means that during the night there should be an entire separation, and in the day, that the intervals of communication should be short and interrupted, and under the eye of the keeper, and that all the continued hours of work should be solitary. There is nothing in this state which an enfeebled mind cannot endure, but there is enough in it to produce a sober temper in any mind capable of being reclaimed. If this system of labour and seclusion could be established fully, it would have more permanent effect to reform the offender and to deter others, than

His treatise on prison discipline.

transitory public examples; and we might hope speedily to erase from the law a number of capital sentences, which a Judge is obliged to pronounce, when the greater part of the audience knows they are not meant to be put in execution, lessening thereby the impression which such sentences ought to make when the law should be armed with all its terrors."

Was he Junius?

A charge has been brought against him, which, while it would deeply wound his honour, would place him in the first class of English writers. The astounding notion that he actually was the assailant in the "Daily Advertiser" of the Duke of Grafton, Sir W. Draper, the Duke of Bedford, Lord Mansfield, Sir W. Blackstone, and George III., receives countenance from Chalmers *; — and thus writes Sir Nathaniel Wraxall: "During many years of his life I nourished a strong belief, approaching to conviction, that the late Chancellor, then Mr. Wedderburn, was the author of Junius. Some persons of credit have recognized the handwriting of the letters to be that of Mrs. Wedderburn, his first wife." The supposed similitude of handwriting in this case amounts to nothing, and the only other circumstance I am aware of to support this strange supposition is, that Junius is uniformly partial to George Grenville, who was Wedderburn's patron. But although an anonymous libeller in the newspapers might, by way of blind, have mentioned his own name with some discourtesy, could he have thus disclosed his selfish system of political warfare,—"The wary Wedderburn never threw away the scabbard, nor ever went upon a forlorn hope"? — or could he have passed sentence of perpetual infamy upon himself in such stinging epigrammatic language as this, to be fixed in every man's memory,—"As for Mr. Wedderburn, there is something about him which even treachery cannot trust"?— or could he have tried to mitigate the odium to be cast upon the individual by thus reflecting on his country: "I speak tenderly of this gentleman, for when treachery is in question, I think we should make allowances for a Scotchman"? Although Junius loves to dabble in law, and with the assistance he received could

* Biographical Dictionary — "Loughborough."

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The true Junius.

treat a legal question plausibly for the uninitiated, it is quite clear, from the mistakes into which he falls, that he was not a professional lawyer.* Thus, in his address to the English Nation, speaking of the House of Commons, he says, "They are only *trustees*, the *fee* is in us." Now those who are of the craft all know that the fee is in the trustee, not in the "cestui que trust," or person beneficially interested. Besides, there is a case against Francis as the real Junius, which would convict him before any fair and intelligent jury. One would suppose that the writer was of higher rank than a clerk in the War Office, and that he had been instigated to his calumnies against the great statesmen of the day by personal rivalry, personal wrongs, and personal resentments; but there is overwhelming evidence to prove that Sir Philip delivered the MS. to Woodfall, and though the letters are certainly superior to any of his acknowledged compositions, there is a family likeness to be discovered among them all, and after his departure for the East Indies, when Junius disappeared, he never again wrote under such excitement, and with such an opportunity of giving unrestrained vent to his malevolence. No weight can be attached to his denial, supposing it to have been ever so peremptory, instead of being faint or equivocal; for, independently of the personal risk which would have arisen to him, even late in life, from an avowal of his slanders, no man of right feeling, or with any regard to his estimation in society, would submit to the moral disgrace of being considered the author of these letters, for all the literary renown they would confer upon his name.†

* There is strong internal evidence from Shakespeare's plays to support the statement that he had been bred up in an attorney's office. He frequently makes use of law terms, and always with the most exact propriety — from his "fines and recoveries" to his "action of battery." I do not yet despair of writing an Essay on this *lego-literary* subject.

† I can still further refute the supposition that Wedderburn was Junius, and prove that Sir Philip Francis was the man, by the following letter from Lady Francis, his very amiable and intelligent widow, which she was good enough to write for my information, and which I have her permission to publish. After unmerited compliments to "the high character of Lord Campbell's work," she thus proceeds[1]: — "Sometimes I have doubted whether I had a right to be-

[1] I am indebted for it to the kindness of my old and excellent friend Mr. Edward Dubois, the ingenious author of "Junius Identified."

During the discussions in the House of Lords on the Regency, the Duke of Richmond strongly intimated that Lord

Letter from Lady Francis, to prove that her husband Sir Philip was Junius.

tray, what Sir Philip never would have confessed, and which I could only have obtained the conviction of from his confidence in my discretion, which made him lay aside with me that guard over himself, and that strict watch over every word which he felt necessary, but which was often irksome to him *auprès du monde*. I believe *that* was the secret of his attachment and marriage so late in life — like the wife of Midas, he wanted some one to whisper the secret to, and I was his reed, as all dutiful consorts ought to be to their lords; yet though his manner and conversation on that mysterious subject were such as to leave me not a shadow of doubt on the fact of his being the author, telling me circumstances that none but Junius could know, he never avowed himself more than saying he knew what my opinion was, and never contradicting it. Indeed, I made no secret of it to him, though not in a way that called for any declaration either way; but I am certain he would not have allowed me to continue in error, if it had been one, knowing my convictions. His first gift after our marriage was an edition of Junius, which he bid me take to my room, and not let it be seen, or speak on the subject; and his posthumous present which his son found in his bureau was 'Junius Identified,' sealed up and directed to me. Sir Philip never did any thing unadvisedly. Edmund Burke observed of him, 'He does nothing without a reason; there is thought and motive in all he does, however trifling.' You know Burke and he were inseparables till the former left the Whigs; but their mutual regard, I believe, always continued. Sir Philip told me that Burke was convinced he was Junius; yet, before he was himself suspected, that is, before the 'Identification' came out, some people, discussing the question before him, asked him if he thought Burke was the writer, as was generally believed at the time: — 'Faith, very likely,' answered Sir Philip, 'for I heard him, and considered it an ingenious evasion, like his answer to Sir Richard Philips, which he took the trouble to explain to me was no denial, and said, 'only fools could take it for one.' He was very anxious to avoid either assent or denial, lest he might implicate truth or honour,—both of which he was very jealous of committing. He affronted poor Sam. Rogers, whom he liked much, to avoid an ensnaring question. On the 'Identified' appearing, he withdrew his name from Brooke's, when almost the father of the club, and petted and privileged by all. They entreated him not to desert them, and several wrote to beg my intercession; but all in vain; he retired, and made no sign. On consideration, I found the cause. A club is neutral ground; it was not like the Select Society, and protection of his own or his friends' houses, and he might have been liable to meet with indiscreet or embarrassing questions. Junius could never have preserved his incognito for so many years, from the time all London was on his traces, through what I am convinced was *his* detection, being most wished by the enemy, and for near thirty years after, and still have left the world in doubt, had he not like a skilful chess-player seen many moves before him; and I firmly believe, such was his skill, that through the whole he was never reduced to a falsehood in terms. In all this I recognize Sir Philip Francis, as if I had looked into his heart all the time. But you will say, 'Why all this fear of discovery, so many years after, when the passions he excited and the hearts they inflamed had long been cold in the grave?' I will tell you, in answer, what I collected from what he allowed me to discover,—for so long as I asked no questions, he would give me much curious information, as of a third person, — from which I select the following for Lord Campbell's satisfaction or amusement, — prefacing, that my inferences were known and uncontradicted by Sir P. You know that he and Philip Rosenhagen were declared by Dr. Thicknesse, the master of St. Paul's School, to be the cleverest boys he ever educated; at twelve and thirteen years old he used to associate with men at a table d'hôte at Slaughter's Coffeehouse, when his father dined with the great;

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Loughborough had been writing abusive articles in the newspapers against the Queen, and seems to have alluded to

at seventeen, he was Latin Secretary to Lord Chatham, then to an Embassy, then to General Bligh, then clerk in the War Office, where he thought himself ill treated. He was at the Court of France in Louis the Fifteenth's time, when the Jesuits were driven away for offending Madame Pompadour; yet people say at twenty-nine years old to thirty-two, he was too young, and could not have gained the lofty tone to be the writer of these Letters, which bear all the stamp of what he must have been at that age, or even younger; but the fire and energy of youth lasted in him even when mature in experience and knowledge, and this union of youth and age not tempered by each other, but both in their extreme, is equally characteristic of Francis and Junius. The former passed his first years with his grandfather the Dean of Leighthin, John Francis, who was a man highly considered in Ireland. Philip was an only and idolised son; he took the lead of his competitors at school, gaining the gold medal there. He was early accustomed to the lofty language and high thoughts of Lord Chatham, who he told me always treated him with consideration, discerning no doubt a spirit within worthy of an appearance greatly in his favour. Nor were the discussions his patron often carried on with his colleagues thrown away, when he was present, on the young Secretary. So brought forward in the world, besides an innate loftiness of character, and a touch of Hotspur in him that would 'pluck bright honour from the pale-faced moon, or dive into the bosom of the deep' for it; when, therefore, he felt himself treated as a mere clerk in office, deprived of the promotion he expected, and even neglected by Lord Chatham, he wanted no stronger stimulus; but, well aware of all the errors of Government which he had been trying to reform or stigmatise[1] under different signatures for some time, his energy was roused, and vented itself in the first letter of Junius. And here let me remark, that a writer who fears discovery should not write too much under one signature. He becomes at length an individual — a character — a living person, — and adds so much to the danger of detection, that nothing but presence of mind, courage, and forethought, like Sir Philip's, could parry it. This first letter, which was a kind of general attack and challenge, was intended and succeeded in bringing out a champion: the shield was struck, and the combat commenced! Sir W. D. gallantly wore no vizor; but Junius could not imitate him: this was an advantage to him; but it was an embarrassment that Sir W. knew his father well and himself slightly. This made him wish to close their controversy; and when his talents had been fully apparent in the castigation the K. B. had received, a new and powerful ally came to his assistance. Whether he knew that Junius was Francis I cannot say, nor whether he did more than slightly supply some facts that he could not have obtained without such aid: that some of the letters were submitted to him before they appeared, I have no doubt. Perhaps I have no right to mention that person's name; for Sir Philip was so anxious to guard it, that I had no doubt he had given his honour that the discovery should never come from him; nor did it; but he was not bound to volunteer an untruth if another found it out. When Junius says, 'I am the sole depository of my own secret, and it shall die with me,' I have no doubt he meant something that was like his reply to Sir R. P. It might be a necessary evasion. Silence, sometimes, is consent. From the year 1805 to the end of 1818, I was either in constant correspondence with Sir P., or was his wife. Most of those beautiful letters were destroyed, as he would have *his* returned at the end of each year; but some few were spared at my earnest request. If these ever appear, they will make the world do him more justice. The situation he had in India, given by Government, of course

[1] "The nation pays all these officers, not the King: *he* is paid himself, and all have duties to perform to the paymaster before all others."

the notion then current that he was the author of the Letters of Junius. Thus he answered the charge: "I do assure the noble duke that I have never contaminated my hands with any connexion with a newspaper. I disdain to taint my character with any such connexion. Formerly newspapers contained effusions of wit, candid remarks on public affairs, and compositions which ingenious minds might delight in;

Lord Loughborough's denial of ever having written in the newspapers.

involved a condition that he should never be known. The King certainly told General Désarguestiers—'We know who Junius is; he will write no more.' I believe it was hoped he would see home no more: two out of the three colleagues never did, and his return was all but a miracle. Had Hastings and Francis been the same height, the ball must have gone through the heart of the latter. Do not think it too severe to say, that Hastings, who was an excellent shot, did not intend to make that common mistake of measuring the heart of another by his own. Remember what one of Mr. H.'s friends said in the House of Lords, and another in the House of Commons: the false account Hastings gives of the nature of the wound looks very like conscience. The determination Mr. H. showed to make Francis challenge him, or lose his honour,—submitting to such an insult as no Irish or English gentleman ever did,—shows, in so crafty a man, that he had prepared for his own security in every way. He was sure that Francis did not wish that his antagonist should fall by his hand; as, while Impey was chief criminal Judge in Bengal, F. was certain, in that case, to have soon followed Nundcomar. No one that had any observation could be a member of Sir P.'s family without seeing that there was the 'volto schiolto, petto stretto' in perfection,—not in his character, but produced by habit and necessity. Many men have many secrets, but they are by nature cautious,—sometimes timid. Sir Philip was daring and open on every other subject; but if the slightest thread of his web were touched, he was instantly on guard; not to *me*, certainly; yet he even kept within the compact that must have passed between the man who, he says, in a character of Fox, was the best tempered public man he ever knew. Some circumstances he always regretted. One was losing the fame of being known; and, even if discovered, it might be said he had sold his power of guarding the liberties and rights of his country. Old people have told me that we have no idea of the sensation Junius created at the time in remote little towns. The postman would call out, as he rode through the streets, 'A letter from Junius to-day!' and all who took in the *D. A.* were besieged with requests. I must do Sir P. the justice to believe that he was driven into the measure of giving up the character, that is, the name of Junius; but, though the conditions were both honourable and lucrative, he had to give up no principles or friends: he had not to approve the men and measures he once denounced; the most honourable of all offices was given to him; and his colleagues, perhaps, think the lights I have given you sufficient to justify my belief. Had any circumstance contradicted it, I would have candidly stated it. Had Sir P. once said to me, 'I am not the writer of Junius's Letters,' I should have given up the belief immediately. He would no more have volunteered a falsehood to me than he would have had the meanness of even leaving me in doubt; since it would be stealing more than the purse (that, indeed, is trash compared to fame) were he not Junius; and when the 'Junius Identified' came out, without mischief to the assumed Junius, the *real one might* have appeared; and then his whole conduct to me must have appeared a studied deceit. He went once so far as to tell me that the truth will be known some time; and you remember the lines which I believe soothed him when he felt he had given up the purest of ambitions. Please to use what evidence you think would tell on a subject I can have no doubts on."

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but of late the common contents of newspapers have been dull uninteresting narrative, or violent personal abuse—dark and malignant insinuations, and foul calumny and aspersion. The reason obviously is the impunity with which such liberties are suffered to be taken with the character of individuals, and the gross and vulgar appetite of the public for scandal." * I believe his disclaimer. Newspapers were then in the lowest state of degradation. In a former age their credit had been supported by the lucubrations of Steele and Addison, of Bolingbroke and Pulteney; and now, in England as in France, newspapers are conducted by men of education and character, and no one would deem it any imputation on his character to be supposed to have contributed to them; but in Lord Loughborough's time, pamphlets were considered almost the only medium for reputable political discussion, and the periodical press seems to have been nearly abandoned to men who violated the sanctity of private life, and subsisted by the propagation of scandal and calumny. The evil once begun was continued in an aggravated shape, as long as it was considered that any one "contaminated his hands by a connexion with a newspaper."

Lord Loughborough said to have been dull in society.

I can find no "sayings" of Lord Loughborough worth repeating. He did not seek, like Thurlow, to gain distinction by a display of his colloquial powers; and, thinking of the superior *éclat* to be obtained by a brilliant speech in *Parliament*, he was contented with being rather obscure in the *salon*. According to some accounts, he submitted to this necessity, after having found by experience that his genius did not fit him for talk. Boswell, having told us that Johnson, in allusion to Lord Mansfield, had said, "It is wonderful, Sir, with how little real superiority of mind men can make an eminent figure in public life," thus proceeds: "He expressed himself

* 27 Parl. Hist. 1092. In this speech he says, that, having been calumniated, "he had acted in an open, manly way, and resorted to the laws of his country for redress;" but I cannot find any account of the proceeding he refers to, and I do not know even whether it was by action or criminal prosecution. I should be exceedingly obliged to any courteous reader who would furnish me with any information respecting it.

to the same purpose concerning another law lord*, who it seems once took a fancy to associate with the wits of London; but with so little success, that Foote said, 'What can he mean by coming among us? He is not only dull himself, but the cause of dulness in others.' Trying him by the test of his colloquial powers, Johnson had found him very defective. He once said to Sir Joshua Reynolds, 'This man has been ten years now about town, and has made nothing of it;' meaning, as a companion. He said to me, 'I never heard anything from him in company that was at all striking; and depend upon it, Sir, it is when you come close to a man in conversation that you discover what his real abilities are; to make a speech in a public assembly is a knack.'" The Biographer observes in a note, which, as well as the above criticism, must have been read by the subject of it and made him wince:— "Knowing as well as I do what precision and elegance of oratory his Lordship can display, I cannot but suspect that his unfavourable appearance in a social circle, which drew such animadversions upon him, must be owing to a cold affectation of consequence from being reserved and stiff."

Q. How much of this is in Thurlow?

He seems hardly ever to have attempted wit or humour,— for which, indeed, some thought he was utterly disqualified by his country. He had grievously offended Miss Burney, by objecting to the Brangtons in her Evelina, as being "too low and vulgar;" but she forgave him "in consideration of his being a Scot, and therefore like a blind man criticising colours."

One *mot* of his related.

One "mot" by him is to be found in the "Memoirs of a Sexagenarian," and it does not much heighten our regret that it has not a *pendant.* "Beloe was once reading to him from Park's book of Travels in Africa the following adventure:— 'My guide, who was a little way before me, wheeled his horse round in a moment, and calling out something in the Foulah language which I did not understand, I inquired in Mandingo what he meant. "*Wara, belli, belli,*—a very large lion," said he, and made signs for me to ride away. But my horse was too much fatigued; so we rode slowly past the bush

* Evidently Loughborough, though not named.

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from which the animal had given us the alarm. Not seeing any thing myself, however, I thought my guide had been mistaken, when the Foulah suddenly put his hand to his mouth, exclaiming, "*Soubali an allahi!* — God preserve us!" and to my great surprise, I then perceived a large RED LION at a short distance from the bush, with his head crouched between his fore-paws.' On hearing the last part of the sentence, Lord Rosslyn laughed heartily, and exclaimed with good humour, 'I suppose it was THE RED LION OF BRENTFORD.'"

His mimickry of Erskine.

He was more felicitous in mimicking the self-laudatory style of Erskine. "The egotism of that pleader," says Miss Burney, "is proverbial, and so happily was his manner hit, rather than caricatured, by the Chancellor, that the audience deemed his inventive faculty a mere exercise of memory. Giving an account of a supposed public meeting, Erskine, he said, opened to this effect: — 'As to me, gentlemen, I trust I have some right to give my opinion freely. Would you know whence my title is derived? I challenge any man among you to inquire! If he ask my birth — its genealogy may dispute with kings! If my wealth — it is all for which I have time to hold out my hand! If my talents — no! of these, gentlemen, I leave you to judge for yourselves!*

The estimation in which he was held by eminent literary men.

If not highly appreciated by Johnson, Foote, and others, who devoted the energies of their minds to conversation, he continued through life to be the chosen companion of men of the highest intellectual eminence. There was much private intimacy between him and Fox and Sheridan while they were associated in politics, and the third great historian who arose in the reign of George III. honoured him not less than the other two. Gibbon in his Autobiography, long after his gratitude for having obtained a seat at the Board of Trade through his interest was moderated, mentions him in terms of the highest personal regard, and when driven back to England from Lausanne by the armies of France,—a few weeks before his death he thus wrote to Lord Sheffield to excuse the imprudence of which he had been guilty, in going

* This seems to have been the origin of the egotistic speech ascribed to Erskine in the "Anti-Jacobin."

into society while in a weak state of health:—"The man tempted me, and I did eat; and that man is no less than the Chancellor. He recals me (the third time this week) to a dinner to-morrow, with Burke and Windham, which I did not possess sufficient fortitude to resist."

Although so early stigmatized by the well-remembered lines of Churchill,—in the latter part of his life I find few poetical notices of him for good or for evil. Having been a stanch Whig while the contributors to the "Rolliad" were amusing the town, he is neither celebrated in the text of that exquisite Epic, nor introduced as the author of a Probationary Ode. He had the good luck likewise to be on the same side in politics as the "Antijacobin," so that he escaped the cutting jests of Canning, Ellis, and Frere.

He was not the patron of men of genius, like Somers and Talbot, but the Great Seal had not yet been disassociated from all that was elegant and liberal. If a time should ever hereafter come when the holder of it shall never think of any thing beyond his paper of causes,—however well he may dispose of that for the benefit of the suitors,—a heavy blow will be given not only to the dignity but to the permanent usefulness of our "order," and the profession of the law, hitherto affording scope for noble ambition and generous rivalry, will, like any mechanical trade, be a scramble for employment and for money. Lord Loughborough made the acquaintance of all the distinguished men of letters who appeared in his time—invited them to his table, and was ready to do them a good turn. He advised Maurice, the author of "Indian Antiquities," to dedicate his book to Mr. Pitt, who, amid many high qualities, was lamentably deficient in the encouragement of literature, and, finding that this homage to power produced nothing beyond a coldly civil speech, he himself solaced the disappointed dedicator with a handsome gratuity and a comfortable post for life in the British Museum.* He very freely assisted with his purse Fearne,

Lord Loughborough's encouragement of literary lawyers.

* It is said that Mr. Maurice, attending in Downing Street to present a copy of his book, with thanks for the honour of being permitted to dedicate it to so great a man, Pitt replied, "The honour, sir, was to me," and bowed him out.

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Hargrave, and other lawyers of profound learning and slender practice; but what I consider still more meritorious, he was always eager to serve those who were not "mere lawyers," but could combine with jurisprudence a taste for *belles lettres*, for metaphysics, or for political science.

His offer to afford pecuniary assistance to Burke. Aug. 31. 1794.

The munificent homage which he was ready to pay to genius was most honourable to him. He offered to contribute to relieve the embarrassment of Mr. Burke's affairs before the pension was granted to that extraordinary man for his writings against the French Revolution. Dr. Lawrence, in a letter to Lord Loughborough, from Beaconsfield, announcing this grant, says:—"Knowing the confidence which throughout this business he has placed in your Lordship's kind offices, I thought it just to inform him how nobly you had answered that confidence by the intimation which you gave me, and had before given Dr. W. King, of your readiness to be privately of service to his affairs, had it been necessary."

His appointment of Judges.

He was not very lucky in the Judges whom he made; but I know not that he was much to blame, for they had enjoyed some eminence at the bar, and no one can certainly foretell how the most distinguished advocate will conduct himself on the bench.*

The laudable disposition of

He is lauded for the distribution of his ecclesiastical patronage, being desirous of giving away preferment so that

* I do not think that he, like his successor Lord Eldon, could excuse any nominations to high judicial offices by the solicitations of the royal family; although it would appear, from the following warm letter of thanks to him, that he had made a Commissioner of Bankrupts at the request of the then Duchess of Gloucester:—

"Gloucester House, Feb. 25. 1801.

"The highest gratification a good mind can receive must be the reflection of having diffused happiness. Such must be your Lordship's present sensation; for you have, by your late noble appointment of George Roots, rendered *that* family perfectly happy, and, I really believe, as perfectly grateful. The father trotted to town as soon as he heard it, and his overflowing eyes were the best expressions of gratitude he could show.

"For suffering me to have some share in promoting the felicity of these good people, you must, my dear Lord, permit me to subscribe myself

"Your Lordship's most sincerely obliged
and unalterable and grateful Friend,
"Maria."

his church patronage.

the parishioners might be satisfied—perhaps remembering the force given in his own country to a "call" when he was a Ruling Elder of the Church of Scotland. Yielding to the applications of friendless men of merit, he would say to them, "Go to my secretary, and desire him to prepare the presentation for my *fiat* immediately,—or I shall be pestered by some Duke or official man whom I shall not be able to refuse." He used to observe what, from my own experience on a more limited scale, I can easily believe to have been true, "that his large livings gave him little comparative trouble, their designation being either anticipated or easily determined; but that for his small livings he had always a multitude of applications, and seldom or never one without at least seven small children to back it."

The father of Lord Nelson, a venerable clergyman, wished to resign, in favour of his youngest son, a living, the patronage of which belonged to the Chancellor, and the gallant Admiral thus at once fired a shot at him:

Letter from Lord Nelson to Lord Loughborough.

"141. Bond Street, October 12. 1797.

"MY LORD,

"In addressing a letter to you, some persons may think me wrong, and that I ought to have chosen the interference of a friend; but feeling a conviction that, if what I have to ask is proper for your Lordship to grant, I require, on the present occasion, no interest but your own opinion of my endeavours to serve the state. I therefore enclose my request, which, if your Lordship has the goodness to comply with, will be a small provision for the youngest son of my venerable father, and a lasting obligation conferred upon Your most obedient Servant,

"HORATIO NELSON."

The following was the becoming answer:

"SIR,

"You have judged perfectly right in the mode of your application to me; any interference would have much diminished the satisfaction I feel in acknowledging the perfect propriety of your request, and the just title your great services have gained to every mark of attention which, in the exercise of public duty, it is in my power to express. Yours, &c.

"LOUGHBOROUGH."

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Doubts as to his religion.

In spite of his services to the Church, it has been asserted that he was without religion, and that shortly before his death he was converted to Christianity by reading Burgh on the "Divinity of our Lord," — which might have been a good cure for heterodoxy, but could not have been prescribed for infidelity. We are further told, that he must have been sceptically inclined from his early intimacy with David Hume. But there is not the smallest reason to doubt that Robertson, and other distinguished literary characters in Scotland, deploring the ingenious errors of the author of the "Essay on Miracles," were themselves steady believers in the truths of revelation. Lord Loughborough never gave offence to the most pious by any thing he said or did, or omitted to do; and notwithstanding a gossiping letter from the Reverend Mr. Gisborne to Mr. Wilberforce, the writer of which must have misunderstood the gentleman on whose information he spoke*, I see no ground for doubting that he was from his youth upwards a sincere Christian, although he might not believe that there is no salvation for any who have not received the sacraments from a priest episcopally ordained — a favourite doctrine of his detractors.

His morals were certainly unimpeachable; and both in his own family, and in his intercourse with society, he displayed not only courtesy of manner and evenness of temper, but kindness of heart. Foolish stories were circulated about his being given to play, his being threatened with executions, and his being obliged to pawn his state-coach; but although he was fond of expence, he never exceeded his income, and although he did not accumulate money to purchase large estates for his heir, he left an ample provision for all those who were dependent upon him.

His person.

His portraits represent him with regular features, a fine aquiline nose, and a mouth bespeaking much intelligence. I myself can testify that, in his old age, he had a handsome as well as dignified presence. Yet at a former period, when he was much subject to obloquy, not only was there said to be "famine in his face," but he was, among other things, re-

* Townsend's Eminent Lawyers, vol. i. 236.

proached for *ugliness;* and, to give point to this charge, the assertion was loudly made that he took great delight in admiring himself in the looking-glass. Mrs. Piozzi tells us that, having mentioned in the presence of Dr. Johnson this ridiculous propensity which distinguished Lord Loughborough and Mr. Caton, the great timber merchant, — likewise very ill-favoured, — he defended them, and thus moralised the subject in a manner truly Johnsonian: "They see reflected in that glass, men who have risen from almost the lowest situations in life,— one to enormous riches,— the other to every thing this world can give—rank, fame, and fortune. They see likewise men who have merited their advancement, by the exertion and improvement of those talents which God has given them; and I see not why they should avoid the mirror."

His marriages.

Lord Loughborough, although twice married, had no issue by either marriage; and his honours, according to the limitation I have referred to, devolved at his death on his nephew General Sir James St. Clair Erskine, who filled several high offices in the state in the reigns of George IV. and William IV. The Chancellor is now worthily represented by James Alexander, third Earl of Rosslyn, the gallant Colonel of the 9th regiment of dragoons, and late Master of her Majesty's Buck-hounds.

His representative.

Character of him by Sir Egerton Brydges.

I could not with propriety conclude this memoir without giving the reader an opportunity of correcting my balanced estimate of the character it portrays by the severer strictures of others. "Lord Rosslyn," says Sir Egerton Brydges, "appeared to be a man of subtle and plausible rather than of solid talents. His ambition was great, and his desire of office unlimited. He could argue with great ingenuity on either side; so that it was difficult to anticipate his future by his past opinions."

By Lord Brougham.

He is still more roughly handled by one of his successors — most highly qualified, no doubt, to observe and to delineate his faults as well as his virtues: "It is the imperative duty of the historian," says Lord Brougham, "to dwell upon the fate, while he discloses with impartial fulness,

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and marks with just reprobation, the acts of such men; to the end that their great success, as it is called, may not mislead others, and conceal behind the glitter of worldly prosperity, the baser material with which the structure of their fortune is built up. This wholesome lesson, and indeed needful warning, is above all required when we are called upon to contemplate a professional and political life so eminently prosperous as the one which we have been contemplating, which rolled on in an uninterrupted tide of worldly gains and worldly honours, but was advanced only by shining and superficial talents, supported by no fixed principles, illustrated by no sacrifices to public virtue, embellished by no feats of patriotism, nor made memorable by any monuments of national utility, and which, being at length closed in the disappointment of mean, unworthy desires, ended amidst universal neglect, and left behind it no claim to the respect or gratitude of mankind, though it may have excited the admiration or envy of the contemporary vulgar." *

Conclusion.

Much of this censure is well deserved, but I think it may be mitigated by considering that Lord Loughborough was distinguished by lofty aspirations, as well as amiable sentiments; and that he was free from faults and follies which have made other occupiers of the "marble chair" odious or ridiculous.†

* Historical Sketches, vol. i. 87.

† In fairness, I present to the reader the following observations of Miss Cotes, who must, at all events, be allowed to have had a far better opportunity of forming a just opinion of her distinguished relative than any of his biographers:—

Defence of Lord Loughborough by his niece Miss Cotes.

"I may, perhaps, be suspected of partiality in describing the character of one who was to me as a second father; but I can assure you that I state nothing that I do not strictly believe to be true.

"While in office, his attention to the laborious and various duties of his station was unremitting, and certainly undermined his health. Whatever he did was dictated by the most undeviating regard to principle, and desire of acting as he thought right; and no selfish considerations would ever deter him from doing what he believed to be his duty. He was adverse to the Catholic Emancipation, considering the admission of Roman Catholics to offices of trust injurious to the Established Church, to which he was zealously attached. In the disposal of church patronage, he was always anxious to attend to the recommendation of those persons whose influence in the respective parishes made it desirable that the appointment should be agreeable to them, his earnest endeavour being to bestow the livings in his gift in such a manner as to advance the interests of the Church; and rarely was he known to give a living from private favour.

"In the latter part of his life, when increased infirmities at times required constant attention, I was often in attendance upon him, and witnessed his

APPENDIX

TO

THE LIFE OF LORD LOUGHBOROUGH.

Mr. Burke to Lord Loughborough.

"MY DEAR LORD; 27th May, 1792.

"I have obeyed your commands. I have had this day a pretty long and very satisfactory conversation with my great neighbour and our common friend. He is much affected with the awkward situation into which the old Whigs are brought by the strange manœuvres of the new. As no man ever loved the public better, he is at least as much affected with the debility of the constitutional government, at a time when the wildness of the people, the misunderstood policy of princes, and the general state of every thing abroad and at home requires that it should be strengthened by every honest means. I stated to him two of the three plans on which we talked, and left them both to his consideration. The third, as infinitely the most difficult, I left to time and to the thoughts of others, as well as his own more mature deliberation. I had not much to say. He entered fully into the situation of himself and his particular friends; if their situation deserves that name, for, as he observed, they were *no where*, and could neither support their own personal consequence nor the interest of the country,— in the government of which they had no share — nor in opposition — a large and the most active part of which had taken a course productive of the most doubtful effects, not only without his consent or knowledge, but in direct defiance of his most known and dreaded opinions. Of all men that ever lived, the Duke of Portland is the most averse to shaking the smallest particle of the Revolution settlement, or even tampering with it in the slightest degree. He loves, at least as well as any professor, the liberty of the subject, and he is convinced that it has no security, and can have none separated from the just

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patience and kindness to all around him; and admired the activity of his mind, which, in the midst of much suffering, found amusement in reading all the modern works that were deserving of perusal." — *Letter from Miss Cotes.*

Miss Cotes, particularly earnest in denying that her uncle was slighted by George III., says, in another letter, — " The extreme improbability that a man in Lord Rosslyn's state of health, and *who wanted no favours*, should continue his attendance unless he was civilly received, seems so evident, that I trust it must be clear to every one that his only motive for doing so was personal attachment to his Sovereign, which, I am certain, he felt to the greatest degree." — The probability is, that they were *equally* attached to each other, and that "no love was lost between them."

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prerogative of the Crown, and the importance of the intermediate orders. If I am not greatly mistaken, so far as he himself is concerned, he is thoroughly determined in any way, in or out of office, to give a real support to government against all schemes of visionary republic, or which in their tendency lead that way. He has always hated the French constitution, and all its works, as much as I did, though, according to his mood, he was slower and less public in declaring his creed. I say less public, for we all know what he thought in private. However, though I think his mind is made up, the minds of his friends are by no means ready for action at a conjuncture and in a course of politics for which they are not prepared. But a few days well employed will give him a clear insight into their dispositions, for without them he neither can or will act — neither ought he — for the whole public effect of whatever step he shall take will depend upon those who will think and feel as he does. I am sure they are not ripe for this. I therefore stated to him the preliminary step which at any rate I thought ought to be taken, and that he ought to make a point of it with you. He determined nothing, because I believe the larger plan occupied his thoughts. He is alarmed and embarrassed — not about interest or ambition (things which never entered into his thoughts), but between his love to old friends and his solicitude for his country now at a crisis of its fate. See him to-morrow. He goes to town. Adieu, and believe me as a man anxious about you all, though not at all personally concerned in any arrangement.

"My dear Lord,

"Most sincerely yours,

"Edm. Burke.

"Beaconsfield, Sunday evening."

Mr. Burke to Lord Loughborough.

"My dear Lord, 13th June, 1792.

"I think with you almost in every thing. I will see the Duke of Portland this morning, though I have nothing new to say to him. I have already anticipated the ideas of your Lordship's letter. I had a very long conversation with the Duke on the subject of a coalition, which began by my suggesting that by — not his permission, but by — his express desire, you should instantly accept the Great Seal as a preliminary to future arrangements, and if these should prove impracticable, as a means of preserving a communication with him, and of giving their weight to his wise and honest sentiments in the conduct of affairs, as well as to ensure his support to government at a time which I must ever think critical to its very being, and to the public safety in every particular. We talked much on this topic. He did not appear to differ from me either in opinion or wish. But if I were to form a judgment on the cause of his irresolution on this point, it is partly from a great personal tenderness to yourself, in part (and in the most considerable part) to his great desire of making your arrangement a member of a large coalition system to take place, if possible, at the same time. On this great scheme (I think it utterly impracticable) he has great difficulties. Our discourse continued till Lord Malmesbury came in, who was wholly occupied with the Forest Bill. So I left them. As you seem to think it may be of some use, I will call again some time this morning — but I must first talk to Lord Fitzwilliam, with whom I have not lately had any conversation. As to the coalition of which Mr. Fox is to make part, no doubt as a system of strength, so long as such a coalition could hold together, it would be desirable. But when I talk of strength, I can never put out of my mind the question of its application. I never can wish the prevalence in the cabinet, the parliament or the country, of the French and dissenting scheme of things, nor any thing which can fortify the ministers in their ideas that we have no concern in the prevalence of that miserable system upon the Continent. Seeing how this must be, coalition or not, I am in perfect despair. But I never shall be indifferent about your Lordship, or the interest

which I believe the public has in you. I am ever, with great truth, most affectionately yours,

"Edm. Burke.

"Duke Street."

From Ralph Payne (afterwards Lord Lavington) to Lord Loughborough.

"July 21st, 1792.

"The only current domestic rumour that has reached my ears is, that Lord Loughborough is to be created an Earl (with the reversion to Sir James Erskine), and is to have the Seals himself, with great situations for all his friends. This is told me twenty times a day, and my reply is, that his Lordship's concealment from all his friends of an event which would give them so much pleasure, is not consistent with his usual kindness to them; and that I vow, as one very humble friend, that I have not heard a word of it."

Earl of Carlisle to Lord Loughborough.

"July 29th, 1792, Grosvenor Place.

"My dear Lord,

"I find by Granville that the administration is considered to be so weak that its dissolution is inevitable. But that weakness is to be looked for in the House of Lords. Whether you will *prop* or destroy is a point of no trifling importance. Pitt, who must turn to you for succour, surely did not act judiciously as to the admission of Fox. If we keep together as an opposition, place who they may upon the woolsack, excepting yourself, — and the business of the House of Lords oversets them. You have, my dear Lord, in my conception, as much power in your hands as ever fell into those of any individual in any condition of public affairs. The country calls upon you with a loud and peremptory voice. You are connected with many persons of high consequence in point of abilities, and of higher in point of honour and integrity, and I do trust that there is a discoverable path which will lead to the gratification of the public claim, and at the same time to the cordial approbation of those whose opinions and judgments are, I know, as estimable as their friendship and respect.

"Believe me to be, ever yours, most affectionately and sincerely,

"Carlisle."

Earl of Carlisle to Lord Loughborough.

"My dear Lord, Autumn of 1792.

"It appears to me very necessary, before we are all dispersed, clearly to understand Fox upon some important points. The following question ought not to remain undecided, viz. whether he would listen to overtures that did not extend to those who have lately laid the party under such difficulties, and drawn upon themselves so much popular odium; and whether he would *not* accept office, unless he could introduce with him persons so described. The conduct of these towards him individually ought to make his decision easy, unless he has so strong a leaning towards their principles and systems as to intend to forward them when the occasion offers. If he declares he cannot with honour look towards any negotiation calculated to *exclude* these persons, we shall have the point at least cleared — that we are to carry on the old system of opposing government for the purpose of advancing men whose principles we don't approve, and whom we should dread to see intrusted with much power.

"I cannot help lamenting that some specific proposition has not been the

result of late conversations,—the acceptance or rejection of which would remove all doubt upon this subject, and avoid the awkwardness of a blunt interrogatory. This interrogatory must, however, not be omitted from delicacy and squeamishness. It would be something more than absurd to see the country trembling under a weak government in this moment, and to afford it no strength, but on the contrary to perplex it, because men who have by their folly and violence incapacitated themselves as to situations of trust and power, have not trust and power offered to them. This naturally brings me to a view of your condition as to the Seals. I should be sorry to see them in your hands, denuded from any persons with whom you have lately acted, unless these previous explanations had obtained, which would open distant views and remote intentions, and afford you, with others, the power (which we all ought to enjoy) of choosing whether to give or refuse our assistance towards their completion. I should be also most extremely concerned to see you take any step which had not the entire concurrence of the Duke of Portland, for I am sure we have both the same esteem for his fairness and integrity, and would have the same consolation in his approbation of our conduct.

" I don't know whether Fox would hear of any thing beneath the first situation. There is no reason to suppose Pitt would descend a stage to accommodate him. This difficulty, however, removed, you must prepare yourself for all the embarrassments that would be flung in the way by those who would be cast at a greater distance by such arrangements as would leave Pitt where he is. These, I am sensible, would weigh much with Fox. He inclines much to the opinion that unless there were some secret weakness and cause of fear no propositions of accommodation would be produced, and that in many possible events Pitt would not be able to prevent the triumph of the party. We are to consider whether that triumph is a thing to be wished for or dreaded. I confess I should consider it a public duty to prevent it rather than promote it.

" Believe me to be, ever yours, most affectionately and sincerely,

" C."

Mr. Pitt to Lord Loughborough.

" Nov. 17. 1792.

" Mr. Pitt presents his compliments to Lord Loughborough, and is very desirous of having an opportunity of having some conversation with his Lordship, if he is at leisure, in the course either of to-morrow or Monday. If Lord Loughborough could without inconvenience have the goodness to call in Downing Street, Mr. Pitt will be at his commands at any time he will be so obliging as to name.

" Downing Street, Saturday Night."

Mr. Pitt to Lord Loughborough.

" 25th Nov. 1792.

" Mr. Pitt presents his compliments to Lord Loughborough, and has received the honour of his letter. Being very desirous of an early opportunity of conversing with his Lordship, and having engagements which will hardly admit of his going from home this morning, he takes the liberty of requesting Lord Loughborough to call in Downing Street at three to-day if that time is not inconvenient to him.

" Sunday."

Mr. Burke to Lord Loughborough.

" My dear Lord, 28th Nov. 1792.

" If the great sacrifice you have made (the greatest for which this kingdom supplies a motive) had been made to any solid principle, or to any virtuous

public cause, I should only have to congratulate your Lordship on so splendid an occasion of discovering a manly constancy. But it is far otherwise. You have been obliged to make this sacrifice, neither to your own principles, nor to the principles of your friends, nor to any principles at all that I can discover. In effect and substance, it is made that two or three gentlemen may carry on their Gallican politics without losing their importance or their reputation. I never will allow that enormous aggregate of crime and madness, called the French system, to stand for principle in any man. The attachment to it is a proof of a malignant and wicked disposition, and this is all that can be truly said of it. That this system should call to its aid, against their opinion and against their will, the most virtuous man in the kingdom, is a fatality which is not the least lamentable and alarming among the prodigies of this portentous period. I have had but one opinion on this subject since (on the plan adopted by them) all official coalition on the part of our friends was impossible. Whilst their support to ministry in some way or other was necessary, the best and wisest thing they could do was to send your Lordship in, to hold, at their desire and request, the Great Seal, in order to form a link of confidence between them and office, and to give weight and efficacy to their opinions. This was my settled judgment with regard to their conduct, declared *reiteratedly* to Sir Gilbert Elliot, and *once* very distinctly to Lord Malmesbury, for the purpose, if it agreed with their own sentiments, of pressing it, as well as other very essential points (or what appeared to me such), on the Duke of Portland. I also mentioned it more than once to himself personally. I am at this hour so convinced of the propriety of this measure, that I should be very sorry that the Great Seal was put out of commission until they were able to foresee a more reflected judgment on that subject.

"Though what you have done is far from doing service to any public principle, it must be a great inward satisfaction to you. You have made a trial of yourself to yourself. This sacrifice does infinite credit to your feelings of personal honour and private friendship; and to those who already love and value you it is a new motive to esteem and affection. You have given an extraordinary proof of attention, not only to the formed and digested opinions, but even to the doubts and scruples of those worthy people with whom you act. One good it may possibly do: it may call them to a more serious examination than hitherto they have made of those points on which such important sacrifices are justified; it may call them to a more critical attention to the means of those whose conduct requires that kind of sacrifice.

"I find that they have had an interview with Mr. Fox. I don't know whether you were at it. By what I hear, if Mons. L'Egalité were himself to dictate a plan of politics, it would not differ materially from that of Mr. Fox. I mean as to foreign politics, which are, however, foreign only in name; for they are not only connected with our domestic politics, but the domestic politics are actually included in them. Every interview with Fox disables all their faculties at once. I find Windham has gone into the country; his activity, arising from his just alarms, is over, and he has sunk through doubts and perplexities into a sort of repose. Such at least, I fear, is the case.

"I did not at all like the spirit of the conversation at your dinner. Fear operates very differently on different minds. Lord Stormont appeared much alarmed; but he is, I think, more apprehensive from the means of safety than from the cause of danger. It is plain to me that he is unwilling to go to extremities against those who may have it in their power to revenge and reprise themselves on his great fortune. By common consent all discourse of foreign affairs (the *unum necessarium*, that which will suffer neither compromise nor delay) was put out of doors as a thing quite unsafe for us so much as to discuss. As to systematic opposition (now a dangerous plaything) they are wholly unwilling to abandon it. They will still play with their billequet, though they stand on the edge of Dover Cliff. But I must give a truce to my reflections as addressed to you, and finish the long letter I am writing to Lord Fitzwilliam. I am in

a very melancholy mood, to which I believe this gloomy weather contributes. In all weathers and moods I am,

"My dear Lord,
"Very faithfully and affectionately yours,
"EDM. BURKE.

"Nov. 28. 1792."

Mr. Pitt to Lord Loughborough.

"(Private.) Downing Street, Friday Evening, Dec. 7.

"MY LORD,

"I make use of the permission which your Lordship gave me in sending you a draft of the King's speech. You will consider it as a first draft, liable to any alteration in consequence either of events which may happen before Parliament meets, or of what may occur on further consideration. I should be happy to learn your opinion upon it, and if you think it right to communicate it to the Duke of Portland I should be glad that his Grace should have an opportunity of seeing it, but I must request that the communication may go no further.

"I have the honour to be,
"My Lord,
"Your Lordship's obedient and faithful Servant,
"W. PITT."

Mr. Pitt to Lord Loughborough.

"(Private.) Downing Street, Friday, ½ past 5.

"MY DEAR LORD,

"The supposed *new system* vanishes as you thought it would on discussion, and seems neither to include any new line of measures or any objectionable principle. I am afraid, however, that the difficulty respecting Lord Fitzgibbon, and that of opening a situation for Lord Westmoreland, still continues; though I do not think the Duke seemed quite inflexible on either of those points, nor did he seem wholly to reject the other idea of Lord Fitzwilliam's remaining in his present situation. Our conversation ended in this way, which certainly does not preclude all hope of a satisfactory settlement.

"Ever sincerely yours,
"W. PITT."

Mr. Pitt to Lord Loughborough.

"Downing Street, Monday, Dec. 19. 1792, 1 P.M.

"MY LORD,

"I am extremely obliged to your Lordship for your letter which I have just received, and for your suggestions respecting the speech. It gives me, as you will easily believe, the greatest satisfaction to learn that the general line meets with your Lordship's approbation, and with that of the Duke of Portland. I should be extremely glad that it should also be communicated to Lord Carlisle and Lord Fitzwilliam, as well as to any other persons to whom your Lordship might think it advisable confidentially to show it. I understand that neither Mr. Windham or Mr. Burke are yet in town. I should otherwise much wish that they should see it. There may probably be some slight alterations made in some passages, particularly with a view to your Lordship's suggestions respecting India. On that point, and on some others relative to the steps which may be taken at the opening of Session, I should be happy if Mr. Dundas and myself could have half an hour's conversation with your Lordship at any time

that would be least inconvenient to you in the course of this evening (if possible) or to-morrow.

"I have the honour to be,
"My Lord,
"Your Lordship's most obedient and faithful Servant,
"W. PITT."

The Duke of Portland to Lord Loughborough.

"Thursday Morn., 27th Dec. 1792.

"MY DEAR LORD,

"I left the House last night in a state of perplexity and distress of mind, which I think you must have observed; and of which I feel myself bound to give you an explanation. I felt the justice of your reproach, and indeed I was in expectation of it; but having let slip the opportunity of speaking after Lord Guilford, it became impossible for me, after Lord Carlisle's speech, to rise without entering much more largely into the subject, and without taking a much wider field of discrimination, than my unfortunate habits would allow me to suppose myself capable of arranging my thoughts for, and much less of selecting the phrases in which it would have satisfied me to express them. My intention was to have said in addition or explanation of the few sentences I spoke on the second reading of the Bill, that my sense of the danger to which this country was exposed, made me wish that the measures which might be thought necessary to be taken for its safety might be such as would enable me to give my support to them, because in that respect it would be my wish to give ministry a fair and honourable support; but I can by no means subscribe a declaration or *publicly* admit the danger or impropriety of a present change of administration, and least of all for the reasons pretty distinctly intimated by Lord Carlisle; many reasons would forbid my doing it. It is a direct renunciation and denunciation of Mr. Fox, to which I cannot in conscience accede; it bends to an unqualified and unconditional support of the present administration, against which I enter my most decided protest, and for which I have little occasion to look further for *reasons* than to the appearance yesterday in the House, where they must have sunk in disgrace and contempt but for that assistance which your feelings for the safety of your country induced you so charitably and honourably to bestow upon them. My opinion with respect to an immediate change of administration is not altered, but it is so for reasons which I would not and should not have thought it proper to disclose or avow in public. It was, as I felt at the time, impossible for me to have spoke and not marked this difference of opinion. I knew I could not have done it to my own satisfaction, and with that precision which these unhappy hours particularly require. I therefore thought it most advisable to remain quiet and firm upon the ground I had taken in a former stage of this business, and thus I account to you for my silence.

"I am ever, my dear Lord,
"Most sincerely yours,
"PORTLAND."

Mr. Pitt to Lord Loughborough.

"Wednesday, 4 P.M.

"MY DEAR LORD,

"Finding that Dundas does not mean to come to town, and my letter having had no effect, I think it best to go to him at Wimbledon in order to make another effort to shake his resolution, and the King has charged me with a letter to him for the same purpose. I regret being obliged to give up dining with you; but the occasion will, I am sure, make my excuse. I really feel

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more of the interest of government at stake, and depending on this one point, than I can describe.

"Ever, my dear Lord, sincerely yours,
"W. Pitt."

Same to Same.

"My dear Lord,

"You will be happy to hear that I have been successful, and Dundas consents to remain as Secretary of State for the business of the war.

"Yours ever,
"W. Pitt.

"Downing Street, Wednesday, 8 P. M."

Same to Same.

"My dear Lord,

"You will be happy to hear that the arrangement is satisfactorily and completely settled. The D. of P. takes the Home Department, *with* the Colonies, but *without* the management of the business respecting the war; Lord Fitzwilliam, Ireland; Lord Mansfield in the Cabinet, and Windham, Secretary at War. This latter cannot be mentioned for a day or two, in order to give time to arrange with Sir G. Yonge. We mean to adjourn to Friday, and may clearly prorogue on that day.

"Yours, &c.
"W. Pitt.

"Monday, 2 P. M."

The Earl of Carlisle to Lord Loughborough.

"13th Jan. Grosvr. Place.

"I flatter myself, my dear Lord, that I don't send you my sincere congratulations either precipitately or prematurely, for I learn that your decision has been expected with much anxiety, and the time you have taken for consideration deemed full long enough for determination. This will account why there was no repetition of the offer.

"It gives me now as much satisfaction as it did before the contrary, that you submitted with such resignation to the D. of P. on the point of refusal or acceptance. Whatever reasons composed his sentence, I take it they all centered in a consideration for Fox. Those can exist no longer. No possible complaint can arise on his account. The man who goes up in a balloon might as well reproach the earth for leaving and deserting him as Fox can any individual of the old Opposition for any conduct they may think fit to adopt. The sacrifice made by you at that time I ever looked upon as designed to keep him down from such extravagant flights; and of great use it has been. [His Lordship then touches upon his own prospect of an opportunity to serve the public, and thus concludes.] How far your friendship would induce you to connect this with things of greater consequence, or with what emphasis you would think fit to comment upon it in its proper place, either to P. or D. as grateful to yourself, not dishonourable to them and acceptable to me, I leave, where it may be most safely reposed, to your discretion as well as to your regard and consideration of me.

"Ever yours, my dear Lord, most sincerely, &c. &c.
"Carlisle."

Copy of a Letter from Mr. Secretary Dundas to Lord Chancellor Loughborough, in favour of Catholic Emancipation.

"MY DEAR LORD, Wimbledon, 12th January, 1801.

"I return you the accompanying papers which your Lordship has done me the honour to communicate to me, and I need scarcely assure your Lordship that I have given to them the serious consideration which they merit, not only from the importance of the subject, but from the comprehensive view your Lordship has taken of it. I trust I have considered them devoid of all prejudices which may arise from former opinions; — in that, however, I may be mistaken; for I am free to confess, that when it was my duty, in 1793, to give officially a minute attention to the whole bearings of the question, I did form an opinion, that it was impossible to retain our connection with Ireland for any beneficial purpose, unless the interests of the Catholics could be consolidated with that of his Majesty's Protestant subjects in that island, so as to make them feel that, on civil grounds, there was no substantial distinction between them; and the difficulty in giving way to that opinion arose chiefly, if not solely, from the apparent impossibility of creating such a consolidation of interests, without giving to the Catholic interest too great a preponderance in the Parliament of Ireland. I have not before me at present the official correspondence which passed at that period; but my memory greatly deceives me, if any idea then existed, that no further concession could be given to the Catholics of Ireland, without destroying the barriers by which the Protestant establishment was secured. If I recollect right, the question was pointedly put and urged by the Irish government, how far what was then proposed was to be considered as the ultimatum of concession. To that question a negative was as pointedly given, stating that the solution of it must at all times depend upon a full and candid consideration of circumstances at the time the question might arise. The transaction, therefore, of 1793 neither did decide, nor was meant to decide the question. It is now open for candid consideration, and it is by no means impossible that those who, upon the present occasion, may happen to entertain different opinions, may both have recourse to the circumstances which occurred in 1793, as tending to support their different theories at present. On the one hand it may be contended, that having gone so far at that time without giving complete satisfaction, it is in vain to expect it now by extending concession further. On the other hand it will be maintained, that having given so much without danger, and having reserved so little, it was unwise to retain that little, which would always be felt as a sore, susceptible of chagrin and discontent, at the same time that it was not sufficient to give any substantial security.

"It does not, however, appear to me very material to dwell upon what passed in 1793; for the union of the two kingdoms has, in my opinion, so essentially varied the question, as totally to open a new subject of consideration. Neither do I think what passed in 1795 operates against the most liberal view of the subject; for without entering into the minute grounds of dissension, which at that time took place in his Majesty's councils, I am sure the public ground then avowed in the correspondence which checked the unauthorised conduct of the then Irish government, arose from the chance of any further concession tending to diminish the prospect of attaining the desirable object of a Union. I am far from meaning to insinuate, that in a question so complicated in its nature, and so extensive in its consequences, there is not ground for sober and cautious deliberation down to the last hour of decision; but I think I do not overstate the impression I then received, that if a union could have been obtained, there would not, in this country at least, have been any difference of opinion as to the propriety or safety of concession to the extent now stated by the Irish government.

"Admitting, as I do, that what has passed at any former period does not exclude a candid and deliberate consideration of the question, I am ready to lay out of my thoughts every thing that has passed, and to take up the question as it now suggests itself for consideration, influenced by the circumstances of

the moment, and particularly by that leading one of the Union which has taken place between the two countries.

"If I could bring myself to believe that putting the Catholics of Ireland in the possession of every civil right which the constitution holds out to the subjects of this country, they would notwithstanding cherish an active principle of overturning the existing church establishment, I should indeed think the case a desperate one; for if the power of enjoying all the rights of British subjects, with all the blessings and comforts arising out of that situation, does not exclude from their minds the idea of endangering the loss of those blessings by a convulsive disturbance of the government, I do not see how retaining from them all that is proposed to be retained, would in any degree exclude the power, if there exists a real or rooted inclination to attain that object. If there exists in the mind of every Catholic such a deep-rooted bigotry as to induce him, under every circumstance, to operate actively against the ecclesiastical establishment of the country, there is no remedy against such a disease, but the unremitting watchfulness of government, strengthened by the firmness and energy of Parliament; but it does not occur to me how communicating to the Catholics of Ireland the capacity of enjoying a few seats in Parliament, or a few great offices, would render the necessity of the exercise of that watchfulness and energy one bit more or less, if, as the argument supposes, the passion to overturn the established constitution is as unalterably riveted as the enemies of the Catholics are willing to believe. But in my humble judgment this species of reasoning is fallacious in two respects. It greatly exaggerates the supposed prevalence of Catholic bigotry, and greatly underrates the beneficial consequences of that great work of the Union which we have been able to accomplish. If the Catholics of Ireland are indulged in an unlimited toleration, which nobody proposes to deny to them, and if their clergy become connected with government by enjoying its beneficence: — if their tithes are regulated by some such wise and simple arrangement as that which your Lordship's paper so ably suggests, and if, in addition to all this, the Catholics are enjoying the full benefit of all the internal happiness and prosperity which the Union is calculated to produce, I cannot bring myself to conceive that the wish for any particular form or mode of ecclesiastical establishment will preponderate against the feelings of immediate calamity which must fall upon them by any active attempts to disturb and overturn, what they know they can neither disturb nor overturn, without certain ruin to all their present enjoyments. My belief is, that the principle does not exist at present in any degree to the extent supposed, and to whatever extent it does exist, it must gradually decay, and ultimately die out, under the feelings of happiness and satisfaction which the increasing prosperity of the country, under the union of the kingdoms, will constantly hold out to their view.

"I could add a great deal to what I have said, if I was to found upon the particular crisis of the struggle in which we are engaged, and the probability of our enemies looking to the discontents of Ireland as their best hopes; but this would lead me into an endless discussion, and I rather chuse to confine myself to the consideration of the subject on grounds of general reasoning, and my conclusion upon the whole is, that by granting what is asked, we give no additional power to do mischief, if the disposition to do it exists, and that by denying it, we do nothing but leave a basis, on which dissatisfaction and Jacobinism will not fail to build, whenever they can with any the smallest prospect of success.

"I remain, &c. &c. &c.

(Signed) "Henry Dundas."

CHAPTER CLXXVI.

LIFE OF LORD CHANCELLOR ERSKINE FROM HIS BIRTH TILL HE WAS CALLED TO THE BAR.

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Reasons for writing the life of Lord Erskine before that of Lord Eldon.

I RESERVE Lord Loughborough's immediate successor for the conclusion of my work. After a short suspension of Lord Eldon's Chancellorship, it was prolonged above twenty years under George III., under the Regency, and under George IV. He lived down to the reign of Queen Victoria, and he took an active part in politics long after he quitted office—strenuously opposing the repeal of the Test Act, Catholic Emancipation, the Reform Bill, and the other measures which have placed our institutions, for good or for evil, in the condition in which we now behold them. The rival to whom he yielded for a brief space, nearly closed his public life—so brilliant—so useful to his country—when forced to resign the Great Seal in 1807, amidst cries that the *Church was in danger,* because it had been proposed that Roman Catholics might hold in the army the rank of field officer. It will, therefore, be more convenient that I should now proceed with the Life of this illustrious advocate and patriot.

I confess that I am impatient to behold him, and to attend him in his extraordinary career, as he ever engaged the affections as well as excited wonder and applause — from the time he learned "Shantrews" in the dancing school at St. Andrew's, till he presided on the Woolsack at the trial of Lord Melville. Since I accompanied to the tomb the venerable Camden, I have passed through many disagreeable scenes with the dull Bathurst, the overbearing Thurlow, and the faithless Loughborough. I have before me a long journey in the society of Eldon, with whom, notwithstanding his great abilities, profound learning, and delightful manners, I must often quarrel for his selfishness and insincerity, as well as for his bigotry.

CHAP. CLXXVI.

A.D. 1750.

The subject of this memoir commands my love and my respect. He had imperfections to which I am not blind, and which I shall not attempt to conceal; but he displayed genius united with public principle; he saved the liberties of his country; he was the brightest ornament of which the English Bar can boast; and from his vivacity, his courtesy, and his kindness of heart, he was the charm of every society which he entered.

His birth.

On the 10th day of January 1750, in a small and ill-furnished room in an upper "flat" of a very lofty house in the old town of Edinburgh, first saw the light the Honourable Thomas Erskine, the future defender of Stockdale, and Lord Chancellor of Great Britain.* He was the youngest son of Henry David, tenth Earl of Buchan, and counted in his ancient line many distinguished ancestors. The Erskines† are said originally to have been "of that ilk" deriving their name territorially from the domain of "Erskine" on the banks of the Clyde, — but they were so early ennobled that Lord Hailes says, "the title of Marr, which they bore, is one of those titles the origin of which is lost in their antiquity: it existed before our records, and before the æra of genuine history." MARTACUS, the first Earl of Marr, of whom authentic mention is made, was contemporary with Malcolm Canmore and William the Conqueror. James Erskine, a younger son of James the seventh Earl of Marr, and grandson of the Regent Marr, married the heiress of the Earldom of Buchan, which had existed in the time of William the Lion, and being descendible to females had passed through the Stuarts, the Comyns, and other illustrious Scottish houses. Thereupon he had a new charter limiting it to his "heirs male and assigns whatever," and he is called the "sixth Earl

His descent.

* The houses in Edinburgh, some of them sixteen stories high, were then let in stories, or "flats," as houses in Paris now are.

† The name was variously spelt "Ereskin," "Airskin," and "Areseskin." Voltaire, in his Letters on the English Nation, writes it "Hareskins." The common pronunciation in Scotland is "Askin," which gave rise to an often-told repartee of the famous Henry Erskine. A silly fellow at the Scotch bar, not liking a question put to him by the witty Dean of Faculty, testily said, "Harry, I never meet you but I find you *Askin*;" to which he replied, "And I, Bob, never meet you but I find an *Anser*."

Poverty of his father.

of Buchan." He and his descendants wasted the ample patrimony once belonging to the title,—and in the middle of the 18th century, Henry David, the tenth Earl, with a numerous offspring, was reduced to an income of 200*l.* a year.* However, his Countess, daughter of Sir James Stewart of Goodtrees in the county of Mid-Lothian, Baronet, was a woman of extraordinary intellect, which had been highly cultivated, and she was equally remarkable for eminent piety and for peculiar skill in housewifery. The family had been obliged to abandon an old castle standing on the last remnant of their estates, for the elevated but wretched habitation I have mentioned, in the metropolis of Scotland, — where their poverty could be better concealed and their children might be cheaply educated. The Countess herself taught them to read, and was at great pains to instil into their infant minds the doctrines of the true Presbyterian faith. The Erskines were reckoned a most "godly" race. The Earl's great grandfather had suffered in the Covenanting cause in the preceding century, and those pious men, Ralph and Ebenezer Erskine, who had recently seceded from the Establishment, and whose sentiments have been adopted and acted upon by the Free Church of Scotland, were his "far-away cousins." Not only was the house frequented by the eloquent divines who then flourished in Edinburgh, but by the leaders of the "Parliament House," and by members of other families almost as noble and almost as reduced,—who came to partake of "a social dish of tea,"—so that young Tom from his infancy saw society well calculated to form his manners, and to sharpen his intellect. He is said early to have discovered that buoyancy of spirit and playfulness of fancy which afterwards distinguished him. For some years he was kept at the High School of Edinburgh, still—according to the Scottish usage, which is attended with many advantages—eating his meals at home,—having oatmeal porridge for breakfast, and soup

His infancy at Edinburgh.

* It is curious to observe, that notwithstanding the strict law of entail in Scotland, which is so injurious to the country, the nobles there have fallen into poverty much more than in England, where family estates are either unfettered, or are preserved by settlements, made with the joint consent of father and son in each succeeding generation.

CHAP. CLXXVI.

A. D. 1762.

maigre, called "kail," for dinner. While he remained here he is said generally to have been "Dux" of his class, although he was pretty frequently subjected to the discipline of the "tawse."

His education at St. Andrew's.

With all Lady Buchan's economy and good management, the metropolis was found too expensive for the very slender finances of the family, and in the beginning of the year 1762 they removed to St. Andrew's, in the county of Fife, where house-rent was lower, and where they could entirely abstain from receiving company — the education being nothing inferior. Of Tom Erskine, at this period of his life, I can speak from undoubted authority; for he was in the same class with my own father, and with George Hill, afterwards Principal of St. Mary's College, my preceptor, both of whom I have frequently heard talk of him. They described him as of quick parts and retentive memory, rather idly inclined, but capable of great application — full of fun and frolic — and ever the favourite of his master and his playmates.

There is extant a very interesting letter, written by him while a school-boy here, to his eldest brother, Lord Cardross, who had been left behind with a relation at Edinburgh.

"August 11. 1762.

"MY DEAR BROTHER,

Letter to his brother.

"I received your letter, and it gave me great joy to hear that you were in health, which I hope will always continue. I am in my second month at the dancing-school. I have learned *shantrews** and the single *hornpipe*, and am just now learning the *double hornpipe*. There is a pretty large Norway ship in the harbour: the captain took Harry and me into the cabin, and entertained us with French claret, Danish biscuit, and smoked salmon; and the captain was up in the town seeing Papa to-day. He is to sail on Friday, because the stream is great. Yesterday I saw Captain Sutherland exercise his party of Highlanders, which I liked very well to see. In the time of the vacation Harry and me writes themes, reads Livy and French, with Mr. Douglas, between ten

* The same *saltatory* course prevailed when I was at St. Andrew's. The name and dance of "shantrews" some ascribe to a Highland origin, — some to our ancient allies the French. The memory of Lady Buchan was then green, and I was shown a cave on the sea-shore in which she used to drink tea, and make her toilette when she bathed — still called "Lady Buchan's Cove."

and eleven. Papa made me a present of a ring-dial, which I am very fond of, for it tells me what o'clock it is very exactly. You bid me, in your last letter, write to you when I had nothing better to do; but, I assure you, I think I cannot employ myself better than to write to you, which I shall take care to do very often. Adieu, my dear brother, and believe me, with great affection,

"Yours,

"T. E."

Progress of his studies.

At the grammar school of St. Andrew's, under Mr. Hacket, a zealous teacher but not much of a scholar, he attained only a moderate proficiency in Latin, and learned little of Greek beyond the alphabet. But he was carefully taught to compose in English, as if it had been a foreign language, and being fond of books, he read, in a desultory way, many English poems, plays, voyages, and travels. He never was matriculated in the university of St. Andrew's*, but in the session 1762–3† he attended the Mathematical and Natural Philosophy classes, taught by professors of considerable eminence, and from them he imbibed the small portion of science of which he could ever boast.

Thoughts as to his future destination.

With a seriousness not to be expected from his years or his disposition, he began to consider how he was to make his way in the world, and he expressed a wish to be bred to some learned profession, in which he might distinguish himself. His father and mother truly told him, however, that they could not afford this expense, as their means were entirely exhausted in sending his eldest brother, Cardross, to study at Leyden, and educating his second brother, Henry, for the Scotch bar; and that they could do nothing better for him than send him to sea as a midshipman. Being earnestly bent on mental improvement, and having a particular aversion to the sea service, — if he must serve his Majesty, he prayed that a commission in the army might be procured for him. After a correspondence between his

His reluctance to go to sea.

* This I have ascertained by the assistance of Sir David Brewster, Principal of St. Leonard's and St. Salvator's — at present the great ornament of that seat of learning.

† The session begins in November and ends in May.

CHAP. CLXXVI.

A. D. 1763.

father and some old friends of the family, this point seemed to be conceded in his favour. Under that belief he wrote the following letter to his aunt, Lady Stewart, which I think is much to be admired for the ingenuous feelings and noble aspirations which it discloses:—

"Nov. 4. 1763.

"MY DEAR AUNT,

His letter to his aunt.

"I received your letter about a week ago with great pleasure, and thank you for the good advice contained in it, which I hope by God's assistance I shall be able to follow.

"I am extremely glad that you approve of my not going to sea. I shall tell my reasons for it.

"In the first place, Papa got a letter from Commodore Dennis, laying before him the disadvantages at present of the sea service, on account of the many half-pay officers on the list, which all behoved to be promoted before me: he also acquainted Papa that he was sorry that if I did go he could be of no service to me, as he had at present no command, and had no prospect of getting any: he at the same time did not forget the advantages of it; but when I weighed the two in scales, the disadvantages prevailed, and still more when added to my own objections, which are as follow:— In the first place, I could have no opportunity of improving my learning, whereas in the army the regiment is often quartered in places where I might have all advantages. I assure you I could by no means put up without improving myself in my studies, for I can be as happy as the day is long with them, and would ten times rather be at St. Andrew's, attending the classes there, and even those which I was at last year, viz. Natural Philosophy and Mathematics (both of which I am extremely fond of), than at the most beautiful place in the world, with all manner of diversions and amusements. My second objection is, that I would be obliged to keep company with a most abandoned set of people that would corrupt my morals; whereas in the army, though they be bad enough, yet I should have the advantage of choosing my company when I pleased, without being constrained to any particular set;— and thirdly, I think my constitution would not agree with it, as I am very subject to rheumatic pains.* [Then follow some little family matters and messages.]

* These rheumatic pains were probably indicative of a constitutional tendency to the gout, of which his father and mother both afterwards died, and of which

"I shall now conclude with assuring you that I am, my dear aunt,

Your most affectionate nephew,

"THOMAS ERSKINE."*

He enters the royal navy as a midshipman.

However, a commission could not be obtained without purchase, and the original intention of sending him to sea was resumed. The case being properly stated to him, he submitted — fully resolved, under all circumstances however adverse, to struggle for the acquisition of knowledge, and the development of his intellectual powers. In the spring of the following year it was arranged that he should be put under Sir David Lindsay, an experienced sea captain, in command of the Tartar man-of-war. This officer, on the recommendation of his uncle, the Earl of Mansfield, who took an interest in the Buchan family, promised to be kind to the "Young Middy."

March, 1764. He leaves Scotland.

The lad being supplied with his blue jacket, cocked hat, and sword, was almost reconciled to his fate. Embarking at Leith, he took an affecting leave of his family, to whom he was very tenderly attached, and from whom he had not before been separated. His father he never again beheld alive, but his mother survived to encourage his entrance into a profession more suitable to his taste and his talents, and to witness the commencement of his brilliant career.

In the West Indies.

He left his native land with the disheartening prospect of dying a half-pay lieutenant; — but when he next revisited it he was an Ex-Chancellor, a Peer, and a Knight of the Thistle — what was far more valuable, he had achieved for himself the reputation of the greatest forensic orator that Britain ever produced.

It is wonderful to think that the period of life, during which almost all those whose progress to greatness I have traced were stimulated to lay in stores of knowledge at public schools and universities, was passed by Erskine in the hold of a man-of-war, or in the barracks of a marching re-

he himself had a smart attack three years after the date of this letter, at the age of eighteen — the first and last visit of this hereditary complaint.

* Communicated to me by his son, the Right Hon. Thomas Erskine.

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1764–1768.

giment. But his original passion for intellectual distinction was only rendered more ardent by the difficulties which threatened to extinguish it.

His life as a midshipman.

He remained in the Tartar four years, cruising about in the West Indies and on the coast of America. The life of a midshipman has been much improved of late years by superior comforts, and by anxious attention to professional and general education while he is afloat; but in Erskine's time, the interior of a man-of-war presented nearly the same spectacle which we find described in so lively a manner by *Roderick Random*,—and the young officers were taught little else than to smoke tobacco, to drink flip, and to eat salmagundy. Erskine, however,—never neglecting his professional duties,—contrived often to escape from the dark and noisy abode of the midshipmen to a quiet corner of the vessel, where he amused and improved himself in reading books which he had brought on board with him—picking up some new volume at every port he visited. He was soon reconciled to his situation—and his elastic spirits and gay temperament made him not only take a deep interest in the new scenes which presented themselves to him, but to be pleased with all he saw. Joining in the gay dances of the negroes,—when he and they forgot their toil and their stripes,—he formed a favourable notion of slavery as a *status*, which influenced him after he became a member of the legislature,—and he was so warm an admirer of the open, straightforward, light-hearted, brave, though thoughtless and indiscreet character of English seamen, that he would not hear of any plan for rendering them more sober and orderly on shore, saying, "You may scour an old coin to make it legible; but if you go on scouring, it will be no coin at all." *

One letter which he wrote at this time from Jamaica to his eldest brother is preserved, and, by its artless touches, shows the attachment he still retained to home, notwithstanding the *couleur de rose* medium through which he viewed foreign lands:—

* Armata.

A. D. 1768.

Letter from him while in the navy.

"The longer I stay in the West Indies I find the country more healthful and the climate more agreeable. I could not help smiling when Mamma mentioned in her letter 'how much reason you had to be thankful that you gave up your commission, or you would have gone to the most wretched climate on the earth.' I don't know, indeed, as to the rest of the West India Islands; but sure I am, if you had come here, you would have no reason to repent of it. To be sure to stay here too long might weaken a constitution, though hardly that; but to stay here some time is extremely serviceable . . . . I begin now to draw indifferently. I am studying botany with Dr. Butt, so I will bring home drawings of all the curious plants, &c., and every thing that I see. I have sent Mamma home a land turtle, to walk about Walcot garden: it is very pretty, particularly its back, which is all divided into square lozenges, and the shell is as hard as a coat of mail."

He is appointed by his commander acting-lieutenant.

Sir David Lindsay, his captain, who behaved to him with great kindness, was replaced by Commodore Johnson. The "harsh demeanour" of this officer has been assigned as the reason for Erskine quitting the sea service — but this statement is incorrect, for although his manners were rather rough, "Tom," as he called him, was a favourite with him, and was appointed by him acting-lieutenant. In this capacity the future Chancellor made the voyage home to England,—reckoning with confidence on his promotion being confirmed, and hoping to rival Anson and Hawke. But alas! on his arrival at Portsmouth the ship was paid off, and he was told at the Admiralty that on account of the great number of midshipmen who had served longer than him, and whose friends were applying for their advancement, he could not yet have a lieutenant's commission, and there was no saying when his turn might come. He indignantly vowed that he would not again go to sea as a midshipman after having served as lieutenant.

He is again reduced to be a midshipman.

Death and funeral of his father.

While in perplexity as to his future destiny, he had the misfortune to lose his father. The old earl had been for some years a resident at Bath, and had been a regular attendant at Lady Huntingdon's Chapel, established there

under the ministry of the famous Whitfield. From this enthusiast we have a very striking account of his obsequies, the future Chancellor appearing in the group of mourners: "All has been awful, and more than awful. On Saturday evening, before the corpse was taken from Buchan House, a word of exhortation was given, and a hymn sung, in the room where the corpse lay. The young Earl with his hand on the head of the coffin, the Countess-dowager on his right, Lady Anne and Lady Isabella on his left, and their brother Thomas next to their mother, with a few friends. On Sunday morning, all attending in mourning at early sacrament, they were seated by themselves at the foot of the corpse, and with their servants received first, and a particular address was made to them." Having mentioned the preparations for the second service at eleven the same day, when Whitfield himself was to preach the funeral sermon, he continues: — "The coffin being deposited on a space railed in for the purpose, the bereaved relations sat in order within, and their domestics outside the rail. Three hundred tickets of admission, signed by the present Earl, were given to the nobility and gentry. Ever since there hath been public service and preaching twice a day. This is to be continued till Friday morning; — then all is to be removed to Bristol, in order to be shipped for Scotland." The following was the pious inscription on the coffin: —

"His life was honourable — his death blessed.
He sought earnestly peace with God;
He found it
Alone in the merits of our Saviour."

These solemnities made an impression on the mind of the young midshipman which was never effaced. But he was now obliged, with the advice of his surviving parent, to determine upon the course of life he was to pursue.

He had reached his eighteenth year, when, according to the common routine in England, he ought to have been going to commence his studies at Oxford or Cambridge. Most happy would he have been to do so, but the pittance which came to

him under his father's will was quite insufficient to maintain him at an English university, and his talents had not yet sufficiently displayed themselves to justify the hope that he might triumph over the formidable obstacles he would have to encounter if he should study for the bar. He resolved, therefore, to try his luck in the army, and through the recommendation of John Duke of Argyll, Colonel of the "Royals," or "First Regiment of Foot," he obtained an ensign's commission in that corps at the regulation price, — which absorbed the whole of his patrimony.

Sept. 1768. He obtains an ensign's commission in the army.

Of the first two years of his military life I find no account. During this time the regiment was quartered in different provincial towns at home, and we can only conjecture that the sprightly ensign, when he was not at drill, or carrying the colours on a field-day, employed himself in reading books which he borrowed from circulating libraries, and flirting with the pretty girls in the neighbourhood. He fell in love with one of these, who was luckily of respectable family and connections, though without fortune — the daughter of Daniel Moore, Esq., M. P. for Marlow; and on the 21st of April 1770 he led her to the altar.

His marriage.

This imprudent match turned out auspiciously. They lived together in uninterrupted harmony. Become a married man, he, without abating any thing of his outward gaiety, thought more deeply, and was capable of more determined application to business, than would have been possible for him if he had only had himself to care for.

The Royals were soon after ordered to Minorca, then under the dominion of the British Crown, and thither his wife accompanied him. For two long years was he shut up in this island; but they were the most improving he ever spent; and it may be doubted whether his mind would have been better cultivated if he had devoted them to mathematics or the Greek measures, in hopes of a high degree on the banks of the Cam. Laboriously and systematically he went through a course of English literature. Milton was his great delight, and "the noble speeches in PARADISE LOST may be deemed as good a substitute as could be discovered by the

June. 1770. He is sent to Minorca. His studies there.

CHAP. CLXXVI.

1770–1772.

His great proficiency in English Belles Lettres.

future orator for the immortal originals in the Greek models."* He was, likewise, so familiar with Shakspeare, that he could almost, like Porson, have held conversations on all subjects for days together in the phrases of this great dramatist. Dryden and Pope — in our day nearly laid aside by the rising generation, for the mawkish sentimentality now alone allowed to be poetry — he not only perused and re-perused, but got almost entirely by heart. He likewise showed the versatility of his powers by acting as chaplain to the regiment, the real chaplain being at home on furlough by reason of ill health. At first he contented himself with reading the service from the Liturgy; but he found that this was not altogether relished by the men, who were chiefly Presbyterians. Thereupon, his mind being imbued with the religious notions implanted in it by his mother and the godly divines whom she patronised, he would favour them with an extempore prayer, and he composed sermons, which he delivered to them with great solemnity and unction from the drum-head. He used always to remember and to talk of this portion of his life with peculiar satisfaction.

Returns from Minorca. His acquaintance with Dr. Johnson, &c.

The regiment returned from Minorca in 1772, Erskine being still an ensign; and he had leave of absence for near six months. The greatest part of this time he spent in London, where his high-born relations received him very kindly, and introduced him into general society. Making quite a sensation in town by his agreeable manners and graceful volubility, he was well received in the most distinguished literary circles. Often he enlivened the assemblies of Mrs. Montagu, frequented by Dr. Johnson, Sir Joshua Reynolds, the Bishop of St. Asaph, Dr. Burney, and other celebrated wits of that day.†

Boswell, in his inimitable "Life of Johnson," *ad ann.* 1772, says, "On Monday, April 6., I dined with him at Sir Alexander Macdonald's, where was a young officer in the regimentals of the Scots Royals, who talked with vivacity,

* Lord Brougham. † Wraxall's Memoirs, vol. i. 152.

fluency, and precision, so uncommon that he attracted particular attention. He proved to be the Honourable Thomas Erskine, youngest brother to the Earl of Buchan, who has since risen into such brilliant reputation at the Bar in Westminster Hall." It appears that, after the example of David and Goliath, the ensign ventured to combat the literary giant. A controversy arising about the respective merits of the authors of "Tom Jones" and "Clarissa;" and Johnson pronouncing Fielding to be "a blockhead" and "a barren rascal," and saying "there is more knowledge of the heart in one letter of Richardson's than in all Tom Jones,"—Erskine objected: "Surely, Sir, Richardson is very tedious." He received only this answer, which, I think, is not very satisfactory: "Why, Sir, if you were to read Richardson for the story, your impatience would be so much fretted, that you would hang yourself! But you must read him for the sentiment, and consider the story as only giving occasion to the sentiment." The ensign then—showing an instance of the egotistic propensity to which he used to yield—to the amusement and with the goodwill of the company, gave them an account of his occupations in Minorca, and how he read prayers and preached to the regiment.* He afterwards rather rashly objected to a passage in Scripture, where we are told that the Angel of the Lord, in one night, smote 185,000 Egyptians. "Sir," said Johnson, "you should recollect that there was a supernatural interposition; they were destroyed by pestilence. You are not to suppose that

* Mr. Croker, in his edition of Boswell, says,—"Lord Erskine was fond of this anecdote. He told it to the Editor the first time he had the honour of being in his company, and often repeated it, with an observation that he had been a sailor and a soldier, was a lawyer and a parson. The latter he affected to think the greatest of his efforts; and to support that opinion, would quote the prayer for the clergy in the Liturgy, from the expression of which he would (in no commendable spirit of jocularity) infer, that the enlightening them was one of the greatest marvels that could be worked."—But any one might have remarked, without offence, that upon a revision of the Liturgy, this introduction of the prayer for the clergy might be amended.—The Right Hon. Thomas Erskine, in a letter to me, observes,—"His laugh at the prayer for the clergy showed no irreverence for religion, but was meant as a joke upon the Episcopacy, against which his mother, a strict Presbyterian, had always entertained the strongest prejudice."

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the Angel of the Lord went about and stabbed each of them with a dagger, or knocked them on the head man by man."*

A. D. 1772.

His pamphlet on the abuses of the army.

Erskine now came forward as an author, and published a pamphlet, with the following title-page: —

" OBSERVATIONS
on the
PREVAILING ABUSES
in the
BRITISH ARMY,
arising from the
CORRUPTION OF CIVIL GOVERNMENT;
with a
PROPOSAL to the OFFICERS
Towards obtaining an Addition to their Pay.
By the Honourable . . . . . .
An Officer.
'Si omnes volumus, quod arguimur, non distinguemus voluntatem à facto: Omnes plectamur.' — *Tit. Liv.* lib. xiv."

The style of the Subaltern is much more stately and sententious than that afterwards assumed by the Chancellor; but in this production there breathes that ardour of sentiment which distinguished the author through life. A few specimens will be found amusing. Thus he starts off: — " There is no task more difficult than to combat, with success, abuses of long standing; they borrow the appearance of right from immemorial custom, and it is almost impossible to rouse men to acute feelings of sufferings and oppressions, of which they themselves have not seen or felt the beginnings.

" But evils are still more insurmountable when their removal demands a steady and prompt unanimity in extensive communities. The various interests and opinions of men defeat the completion of this most powerful engine of human force; and great reformations are consequently either the fruits of long and often frustrated labour, or the birth of fortunate accidents.

" There may be, perhaps, two causes of the many feeble, ill-concerted, and worse supported attempts towards an augmentation of the pay of the British troops, which seem now to be so submissively or indolently laid aside, and the grievance, with many others, so patiently supported, that to

* Boswell, vol. ii. 177.

offer new proposals on the subject cannot but carry with it the air of Quixotism.

"But as attempts that have been deemed unwarrantable from improbability of success, have often been found to be very easy on trial, and their apparent difficulties to be only the bugbears of irresolution; ardent, enterprising spirits are sometimes eminently useful as pioneers to regular and sober industry. Men who have virtue and talents for executing work which is put into their hands, have not always fertile and progressive inventions, but treat every thing as impossible and chimerical, which presents any glaring difficulties; and the world would stand still, and every species of improvement be at an end, if nature did not provide another set of men, of irritable and restless dispositions, fretful under grievances, and ambitious of being the instruments of public advantage.

"It is this disposition, and perhaps this ambition, which lead me to address myself to the officers of the British army, to demonstrate to them how shamefully, from the present miserable establishment of their pay, and other glaring abuses, they are cut off from their share in the prosperities of Great Britain, to show to them how far this insulting misfortune is owing to their absurd neglect of their own advantages, and to rouse them to a spirited yet constitutional demand of the rights of the most useful and laborious citizens.

"At first view, this may appear to be a dangerous subject, and highly incompatible with the arbitrary principles of military government. What is termed remonstrance in a citizen, is supposed to be mutiny in a soldier; but mutiny I apprehend to be confined to the breach of discipline and subordination in an inferior towards a superior in military command; soldiers do not give up their general rights as members of a free community; they are amenable to civil and municipal laws, as well as to their own martial code, and are therefore entitled to all the privileges with which a free form of government invests every individual; nay, it is to their virtue that all the other parts of the community must ultimately trust for the enjoyment of their peaceable privileges; for, as Mr. Pitt (now Lord Chatham) in his strong figurative eloquence

expressed himself in Parliament, 'To the virtue of the army we have hitherto trusted; to that virtue, small as the army is, we must still trust; and without that virtue, the Lords, the Commons, and the people of England may entrench themselves behind parchment up to the teeth, but the sword will find a passage to the vitals of the Constitution.'"—He afterwards goes on to show that, from the low pay of the army, none but the cadets of high families and persons of great wealth can enter it; and asks whether these men often deserve the honourable title of soldiers. "A commission," says he, "and a tour through Italy, are the finishing strokes to modern education; they are undertaken with the same serious intentions, and are prosecuted with equal improvement. So long as the battalions are encamped on native plains, or ensconced in peaceful barracks, so long these sons of riot and effeminacy maintain their posts. The brilliant orbit of Ranelagh glows with their scarlet, and the avenues of Vauxhall glitter with blades, drawn against unarmed apprentices in the honour of a strumpet, — which rust in their scabbards when their country calls. If for a review or a muster they are obliged to loll in their *vis-à-vis* to the quarters of their regiment, it is but to inflame the contempt and hatred of the people of England against the defenders of their peaceable privileges. They gallop again to town, after having filled the country with such horror at their debaucheries that hospitable doors are shut against officers of principle and reputation.—Such are the advantages which the military profession reaps from these apes in embroidery; such are the heroes that in the event of a war must lead the British troops to battle, for these men rise almost universally over the heads of officers grey with fatigues and rough with scars, — whose courage and abilities yet preserve the honour of the English name, — who, without money and without interest, languish in the subaltern ranks, unknown and unrespected, — who, after having braved all the terrors and calamities of war, and immortalised their country, sink into obscure graves, unwept and unremembered, without a tongue to speak their worth, or a stone to record their virtues. It is only upon the use-

ful and valuable part of the army that all its grievances fall. To the stripling of the peaceable parade it is the limbo of vanity; to the veteran of the field it is a path sown with thorns." — In the same strain the pamphlet goes on at great length to point out abuses, and to call upon the injured officers to join together in obtaining a remedy, which he assures them they may safely do without danger of being punished for mutiny. From the excellent condition in which the army now is under the illustrious Commander-in-chief, we are not necessarily to suppose that these complaints are much exaggerated. When the American war broke out, soon after, the army was found to be in a very defective state, and the public derived considerable advantage from Erskine's suggestions for its improvement. The pamphlet had a great circulation: the name of the author was well known, although it did not appear in the title-page; and he acquired much celebrity by the boldness and eloquence with which he had pleaded for his profession.

Great success of this pamphlet.

Having been some time the senior ensign in his regiment, on the 21st of April, 1773, he was raised to be a lieutenant. The pleasure of promotion speedily passed away, and he became more and more dissatisfied with his situation and his prospects. He was again moving about with his regiment from one country town to another. This mode of life had lost the charm of novelty which once made it endurable, and was now become doubly irksome from his having to keep a wife and family in a barrack-room, or in lodgings, the expense of which he could ill afford. He had no money to purchase higher commissions, and he might wait many years before he gained another step by seniority. Notwithstanding some disputes with the American colonies, there seemed a probability of long and profound peace. He thought himself fit for better things than the wretched existence that seemed lengthening before him — to be spent in listlessness and penury.

He is promoted to be a lieutenant in the army.

His discontent and bad prospects.

It so happened that in the midst of these lucubrations, the assizes were held in the town in which he was quartered. The lounging lieutenant entering the court in his regimentals,

August, 1774.

Occasion of his resolu-

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tion to study the law.

Lord Mansfield the presiding judge, inquired who he was, and, finding that this was the youngest son of the late Earl of Buchan, who had sailed with his nephew, invited him to sit on the bench by his side, explained to him the nature of the proceedings that were going forward, and showed him the utmost civility. Erskine heard a cause of considerable interest tried, in which the counsel were supposed to display great eloquence. Never undervaluing his own powers, he thought within himself that he could have made a better speech than any of them, on whichever side he had been retained. Yet these gentlemen were the leaders of the circuit, each making a larger income than the pay of all the officers of the Royals put together,—with the chance of being raised by their own abilities to the Woolsack. The thought then suddenly struck him that it might not even now be too late for him to study the law and be called to the Bar. He saw the difficulties in his way, but there was no effort which he was not willing to make, no privation to which he would not cheerfully submit, that he might rescue himself from his present forlorn condition,—that he might have a chance of gaining intellectual distinction,—above all, that he might make a decent provision for his family. Lord Mansfield invited him to dinner, and being greatly struck with his conversation and pleased with his manners, detained him till late in the evening. When the rest of the company had withdrawn, the Lieutenant, who ever showed great moral courage, in consideration of the connection between the Murrays and the Erskines, and the venerable Earl's great condescension and kindness, disclosed to him his plan of a change of profession, with a modest statement of his reasons. Lord Mansfield by no means discouraged him; but advised him before he took a step so serious to consult his near relations.

Advice given to him by Lord Mansfield.

Arrangements for his becoming a lawyer.

He accordingly wrote to his mother, and she, justly appreciating the energy and perseverance as well as the enthusiasm belonging to his nature, strongly advised him to quit the army for the law. His brothers did not oppose,—although Henry warned him of the thorny and uphill path on which he was entering. His resolution was now firmly taken, and

he came up to London to carry it into effect. It was not till the spring of the following year that financial difficulties were so far removed as to render it possible for him to make the experiment. Craddock says:—"At the House of Admiral Walsingham I first met with Erskine and Sheridan, and it was there the scheme was laid that the former should exchange the army for the law;" but he had not been made acquainted with the previous consultations, or he would have said that "the plan was there *matured*, and the arrangements were made for his legal studies and his call to the Bar." The period of five years was then required by all the inns of court for a student to be on the books of the society before he could be called—with this proviso, that it was reduced to three years for those who had the degree of M. A. from either of the universities of Oxford or Cambridge. It was resolved that Erskine should immediately be entered of an inn of Court; that he should likewise be matriculated at Cambridge, and take a degree there; that he should keep his academical and law terms concurrently, and that as soon as it could be managed, he should become a pupil to some eminent special pleader, so as to be well grounded in the technicalities of his new craft.

He is entered of Lincoln's Inn, and is matriculated at Cambridge.

Accordingly, on the 26th day of April, 1775, he was admitted a student of Lincoln's Inn*, and on the 13th of January, 1776, he was matriculated at Cambridge, and entered on the books of Trinity College as a Gentleman Commoner†, with the privilege of wearing a *hat*. He had rooms in college, in which he resided the requisite periods to keep his terms, but being entitled to a degree without examination, he paid

His residence at

* "Lincoln's Inn.—The Honourable Thomas Erskine, third son of the Right Honourable Henry David Earl of Buchan, is admitted into the Society of this Inn on the 26th day of April, in the fifteenth year of the reign of our Sovereign Lord George the Third, by the grace of God of Great Britain, France, and Ireland King, Defender of the Faith, &c., and in the year of our Lord 1775; and hath thereupon paid to the use of this Society the sum of Three pounds three shillings and fourpence.—Admitted by J. Cox."

† "Jan. 13. 1776.—Admissus est Socio-commensalis Thomas Erskine, filius Henrici Davidis, Comitis Buchan, defuncti in academia Sancti Andreæ sub præsidio Magistri Dick, olim institutus ann. nat. 25. Mag. Collier et Atwood, Tut."

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1775–1778. Trinity College.

no attention to the peculiar studies of the place. He despaired of ever becoming a great classical scholar, and he never either had or desired to have more than the slightest tincture of science which he had acquired at St. Andrew's. But he still assiduously applied to English *belles lettres*, and practised English composition both in verse and prose. He gained some applause by a burlesque parody of Gray's Bard. The author had been prevented from taking his place at dinner in the College Hall by the neglect of his barber, who failed to present himself in proper time to trim the *aisles de pigeon*, without which no one could then appear in public. In the moment of supposed disappointment, hunger, and irritation, the bard pours forth a violent malediction against the whole tribe of hair-dressers, and in a strain of prophetic denunciation foretells the overthrow of their dynasty in the future taste for cropped hair and unpowdered heads. The ode is not very remarkable for poetical excellence; but he gained the prize given by the College for English declamation. To this academical distinction he referred with complacency in his defence of Paine:—"I was formerly called upon, under the discipline of a college, to maintain these truths, and was rewarded for being thought to have successfully maintained that our present Constitution was by no means a remnant of Saxon liberty, nor any other institution of liberty, but the pure consequence of the oppression of the Norman tenures, which, spreading the spirit of freedom from one end of the kingdom to the other, enabled our brave fathers not to reconquer, but for the first time to obtain those privileges which are the inalienable inheritance of all mankind." He took the honorary degree of A.M. in June 1778.

He gains the prize for the English declamation.

Takes his degree of M A.

His study of the law.

While still a student at Cambridge he contrived to keep his terms at Lincoln's Inn. He had not yet actually quitted the army, having obtained six months' leave of absence. It is said that during Easter and Trinity Terms he excited a great sensation in the dining-hall by appearing with a student's black gown over the scarlet regimentals of the Royals, probably not having a decent suit of plain clothes to

put on. He obtained a supply of cash by the sale of his lieutenancy on the 19th of September 1775.*

As soon as it was practicable he became a pupil in the chambers of Mr. Justice Buller, with whom he afterwards acted the famous scene in the trial of the Dean of St. Asaph; and when this great special pleader was made a judge, he entered himself with another not less celebrated, George Wood, afterwards made a Baron of the Exchequer, with whom he wisely continued nearly a year after he was called to the Bar, attending to the sage counsel of Littleton to his son, which ought to be impressed on the mind of every man who wishes to succeed in the profession of the law:—"Et sachez mon fitz que un des pluis honorables, et laudables, et profitables choses en nostre ley, est daver le sciens de uñ pleder en accions realx et personalx et pur c̃ ieo toy coñseil especialmẽt de mettr̃ tout ton corage et cure ce d' apprendr̃.†

Erskine never did become a profound jurist, but along with his lively imagination he had a logical understanding, and by severe application at this period‡ he made the considerable progress, which several who have been pushed high in our profession have never reached, of being able thoroughly to comprehend any question of law which he had occasion to consider—to collect and arrange the authorities upon it, and to argue it lucidly and scientifically.

When Erskine was at Cambridge no such debating society as the "Union" had been established; but when settled in London, he was in the habit of taking part in the debates of the Robin Hood, Coachmakers' Hall, and other spouting shops, which, according to the custom of the time, were attended by shoemakers, weavers, Quakers, law students, and

* I received this information, almost with the celerity of the electric telegraph from my right hon. friend the present Secretary at War, accompanied by the following note:—

"My dear Campbell,—In your next volume pray *laud* the alacrity and regularity of the W. O., which can give you in two hours information regarding the sale of a commission seventy-one years since.—Yours truly,

"F. Maule."

† Lit. s. 534.

‡ I have several of his commonplace books compiled at this period, showing great industry and perseverance.

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Members of Parliament, each person paying sixpence, and being entitled to a glass of porter or a glass of punch, and in which there is said to have been often a display of great oratorical powers.

His pecuniary difficulties while a law student.

During the three years which followed his retirement from the army, notwithstanding the kind assistance of some of his friends, he was in great pecuniary straits. He had an increasing family to maintain, besides defraying his own expenses as a Cambridge under-graduate and a student of law. Exercising the strictest economy and the most rigid self-denial, he often found it a sore matter to provide for the day which was passing over him. But with a sanguine disposition and a fixed determination of purpose, these difficulties only stimulated him to greater exertions, that he might finally subdue them. "He had taken lodgings in Kentish Town, and would occasionally call for his wife at the house of a connexion who kept a glass shop in Fleet Ditch, and used to talk of him as *our Tammy*." *

Jeremy Bentham, who had kept up an intercourse with him since the publication of his pamphlet on the Abuses of the Army, speaking of him at this time, says,—"I met him sometimes at Dr. Burton's. He was so shabbily dressed as to be quite remarkable. He was astonished when I told him I did not intend to practise. I remember his calling on me, and, not finding me at home, he wrote his name with chalk on my door."

Reynolds, the comic writer, in his "Life and Times," relates that at this time the villa of his father, an eminent solicitor at Bromley in Kent, was frequently visited by Erskine, of whom he gives the following lively description:—"The young student resided in small lodgings near Hampstead, and openly avowed that he lived on cow-beef, because he could not afford any of a superior quality †, dressed shabbily,

* Townsend's Life of Erskine, on the authority of Mr. Pensam, the friend and Secretary of Bankrupts of Lord Eldon. The Right Hon. T. Erskine says, "The connexion at whose house he is supposed (ex relatione Pensam) to have called was, I suspect, Mr. Moore, a jeweller, on Ludgate Hill."

† I have often heard that he used to say that at this time he lived on "cow-heel and tripe."

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expressed the greatest gratitude to Mr. Harris for occasional free admissions to Covent Garden, and used boastingly to exclaim to my father, 'Thank fortune, out of my own family I don't know a lord.'" *

His sudden transition from penury to wealth.

But suddenly he was to be the idol of all ranks of the community, and to wallow in riches. Such a quick transition from misery to splendour is only equalled in the Arabian Nights, when the genii of the wonderful lamp appeared to do the bidding of Aladdin. A sunrise within the tropics displays some fleeting crepuscular tints between utter darkness and the full solar blaze, and therefore cannot be used to give a just notion of Erskine's first appearance to the dazzled eyes of the British public.

* This speech is very characteristic of the vanity which, under the guise of humility, he was accustomed to exhibit.

CHAPTER CLXXVII.

CONTINUATION OF THE LIFE OF ERSKINE TILL HE ENTERED THE HOUSE OF COMMONS.

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Erskine's call to the Bar.

ERSKINE was called to the Bar by the honourable Society of Lincoln's Inn on the 3d day of July, 1778, in the end of Trinity Term *; but not having completed his special pleading discipline, he continued working in the chambers of Baron Wood, and he might be considered as *in statu pupillari* till near the end of Michaelmas Term following. The 24th of November in that term was the critical day in his life, and exhibited the most remarkable scene ever witnessed in Westminster-Hall.

His indifferent prospects.

His retainer in Rex v. Baillie.

Notwithstanding his agreeable manners, he seems to have made no connexions to be of use to him. No attorney or attorney's clerk was as yet aware of his merit. But he had one retainer which came to him by an accident much like Thurlow's in the Douglas cause. Captain Baillie, a veteran seaman of great worth, having for his services been appointed Lieutenant Governor of Greenwich Hospital, discovered in that establishment gross abuses — by which those entitled to its advantages were defrauded. He presented successively petitions to the Directors, to the Governors, and to the Lords of the Admiralty, praying for inquiry and redress. Meeting with no attention from any of them, he printed and

* "Lincoln's Inn. — At a Council there held the 3d day of July, in the eighteenth year of the reign of our Sovereign Lord King George the Third, and in the year of our Lord 1778, — Ordered, That the Honourable Thomas Erskine, one of the Fellows of this Society, having been regularly admitted to the Degree of Master of Arts in the University of Cambridge, and being thereby of full standing of this Society, according to the order of the 30th of June, 1762, and having kept twelve terms' commons, and conformed himself to the rules of this Society, be called to the Bar, on paying all his arrears and duties, and that he be published at the next Exercise in the Hall."

He was made a Bencher in 1785; and Treasurer of the Society in 1795.

circulated a statement of the case, detailing the real facts of it without any exaggeration, and reflecting with great but just severity upon Lord Sandwich, First Lord of the Admiralty, who, for electioneering purposes, had placed in the Hospital a great number of landsmen. Captain Baillie was immediately suspended by the Board of Admiralty; and several of the inferior agents, likewise animadverted upon, although in much less severe terms, — being prompted by Lord Sandwich, who himself hung back, — in the end of Trinity Term applied for and obtained from the Court of King's Bench, a rule to show cause, in Michaelmas Term following, why a criminal information should not be filed against the author for a libel upon them. During the long vacation, Captain Baillie and Erskine, who had never seen each other before, met at a large dinner party.* The Greenwich Hospital case, which had excited great public interest, being mentioned, Erskine, not knowing that Captain Baillie was at table, entered upon it with glee, and fired with the indignation which he really felt, inveighed with much eloquence against the corrupt and tyrannical conduct of Lord Sandwich. Captain Baillie, finding out that he was a young lawyer just called to the Bar, who himself had been a sailor, swore that he would have him for one of his counsel. They parted without being introduced to each other; but the next day, while Erskine was sitting in his chambers in a fit of depression, and thinking that all his labour and sacrifices might be vain, as there seemed so little prospect of his

* The Right Hon. Thomas Erskine sends me the following account of his casually becoming acquainted with his first client: — "The circumstance that led to his meeting Capt. Baillie was strikingly illustrative of the observation, that the slightest incidents are often providentially made the instruments of important results. My father had been engaged to spend the day with Mrs. Moore, the mother of his friend Charles Moore and of Sir John Moore, and was proceeding with his friend C. M. across Spa Fields on foot, where a wide ditch tempted my father to prove his activity by leaping over it, which he accomplished; but, slipping on the other side, sprained his ankle, and was carried home. In the evening he was so much recovered that he determined to join a dinner party, to which he found an invitation on his return home. Capt. Baillie was one of the party. If he had dined with Mrs. Moore, he might have waited for years before such an opportunity of showing what was in him might have presented itself."

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ever having any opportunity to gain distinction, — a smart knock came to his door, and a slip of paper was brought to him with the words written upon it: —

"KING'S BENCH.
THE KING v. BAILLIE.
Retainer for the Defendant,
THE HONOURABLE THOMAS ERSKINE,
ONE GUINEA."

and a yellow golden guinea was actually put into his hand.* He was vain enough to think that he was to be sole counsel to show cause against the rule, and he was much elated by his good fortune.

His first brief.

When Michaelmas Term came round, a brief was delivered to him in *Rex* v. *Baillie;* but what was his consternation to behold upon it —

"*With you, Mr. Bearcroft,*
Mr. Peckham,
Mr. Murphy, and
Mr. Hargrave."

He very reasonably despaired of being heard, or at all events of being listened to,— coming after so many seniors; and he gave himself no trouble to collect or to methodise the ideas upon the subject which had passed through his mind when he believed that the defence was to rest upon his own shoulders.

At a consultation, Bearcroft, Peckham, and Murphy were for consenting to a compromise which had been proposed by the prosecutors, that *the rule should be discharged, the defendant paying all costs.* "My advice, gentlemen," said the Junior, "may savour more of my late profession than my present, but I am against consenting." "I'll be d—d if I do," said Captain Baillie, and he hugged Erskine in his arms, crying, "You are the man for me."

Captain Baillie's case comes on to be heard.

About one o'clock in the afternoon of the 23d of November, the Solicitor General, who had obtained the rule, moved to make it absolute. Bearcroft began to show cause, and the affidavits being very long, and he and the three gentlemen

* This, his first fee, he used long to show as a curiosity; and I presume it is still preserved in the family.

who followed him being very prosy, and Mr. Hargrave, the last of them, having been several times while speaking obliged to leave the Court from indisposition, it was almost dark when he concluded his argument. Lord Mansfield, supposing that all the defendant's counsel had been heard, said, "We will go on with this case to-morrow morning." If the hearing had then proceeded, Erskine would not have done more than say a few words as a matter of form, and he might long have remained unknown.

Nov. 24. 1778. Erskine's first speech at the bar.

When the Judges took their seats on the bench next day, the court being crowded in all parts from the political aspect which the prosecution had assumed, the expectation was that the Solicitor General would immediately proceed to support his rule, and would have no great difficulty in making it absolute;—when there rose from the back row a young gentleman whose name as well as whose face was unknown to almost all present, and who, in a collected, firm, but sweet, modest, and conciliating tone, thus began*: — "My Lord, I am likewise of counsel for the author of this supposed libel, and if the matter for consideration had been merely a question of private wrong, I should have thought myself well justified, after the very able defence made by the learned gentlemen who have spoken before me, in sparing your Lordship, already fatigued with repetition, and in leaving my client to the judgment of the Court. But upon an occasion of this serious and dangerous complexion, — when a British subject is brought before a court of justice only for having ventured to attack abuses, which owe their continuance to the danger of attacking them, — when, without any motives but benevolence, justice, and public spirit, he has ventured to attack them, though supported by power, and in that department too where it was the duty of his office to detect and expose them,—I cannot relinquish the high privilege of trying

* Under such appalling circumstances, it might rather have been expected, that when he heard his own voice for the first time in a public assembly, the description would have been applicable to him—

"And back recoil'd, he knew not why,
E'en at the sound himself had made."

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to do justice to such merit, — I will not give up even my small share of the honour of repelling and of exposing so odious a prosecution." — After some general observations on the common herd of libellers whom the Court had been accustomed to punish, he said, "I beseech your Lordships to compare these men and their works with my client and the publication before the Court. *Who is he? What was his duty? What has he written? To whom has he written? and what motive induced him to write?*" These few questions, which he answered *seriatim*, the advocate made the heads of his inimitable discourse — showing that his client had written nothing but the truth, and had acted strictly within the line of his duty. He was thus about to conclude: — "Such, my Lords, is the case. The defendant, — not a disappointed malicious informer, prying into official abuses, because without office himself — but himself a man in office; — not troublesomely inquisitive into other men's departments, but conscientiously correcting his own; — doing it pursuant to the rules of law, and, what heightens the character, doing it at the risk of his office, from which the effrontery of power has already suspended him, without proof of his guilt — a conduct not only unjust and illiberal, but highly disrespectful to this Court, whose judges sit in the double capacity of ministers of the law, and governors of this sacred and abused institution. Indeed, Lord Sandwich has in my mind acted such a part — " [*Here* (in the words of the report) Lord Mansfield, observing the counsel heated with his subject, and growing personal on the First Lord of the Admiralty, told him that Lord Sandwich was not before the Court.] *Erskine.* "I know that he is not formally before the Court, but for that very reason *I will bring him before the Court.* He has placed these men in the front of the battle in hopes to escape under their shelter, but I will not join in battle with them; *their* vices, though screwed up to the highest pitch of human depravity, are not of dignity enough to vindicate the combat with *me.* I will drag *him* to light, who is the dark mover behind this scene of iniquity. I assert that the Earl of Sandwich has but one road to escape out of this business

without pollution and disgrace, — and that is, by publicly disavowing the acts of the prosecutors, and restoring Captain Baillie to his command! If he does this, then his offence will be no more than the too common one of having suffered his own *personal* interest to prevail over his *public* duty in placing his voters in the Hospital. But if, on the contrary, he continues to protect the prosecutors, in spite of the evidence of their guilt, which has excited the abhorrence of the numerous audience who crowd this Court, IF HE KEEPS THIS INJURED MAN SUSPENDED, OR DARES TO TURN THAT SUSPENSION INTO A REMOVAL, I SHALL THEN NOT SCRUPLE TO DECLARE HIM AN ACCOMPLICE IN THEIR GUILT, A SHAMELESS OPPRESSOR, A DISGRACE TO HIS RANK, AND A TRAITOR TO HIS TRUST. But as I should be very sorry that the fortune of my brave and honourable friend should depend either upon the exercise of Lord Sandwich's virtues or the influence of his fears, I do most earnestly entreat the Court to mark the malignant object of this prosecution, and to defeat it. — I beseech you, my Lords, to consider that even by discharging the rule, and with costs, the defendant is neither protected nor restored. I trust, therefore, your Lordships will not rest satisfied with fulfilling your JUDICIAL duty, but, as the strongest evidence of foul abuses has by accident come collaterally before you, that you will protect a brave and public-spirited officer from the persecution this writing has brought upon him, and not suffer so dreadful an example to go abroad into the world, as the ruin of an upright man for having faithfully discharged his duty. My Lords, this matter is of the last importance. I speak not as an ADVOCATE alone — I speak to you AS A MAN — as a member of a state whose very existence depends upon her naval strength. If our fleets are to be crippled by the baneful influence of elections, WE ARE LOST INDEED. If the seaman, while he exposes his body to fatigues and dangers, looking forward to Greenwich as an asylum for infirmity and old age, sees the gates of it blocked up by corruption, and hears the riot and mirth of luxurious landsmen drowning the groans and complaints of the wounded, helpless companions of his glory, — he will

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tempt the seas no more. The Admiralty may press HIS BODY, indeed, at the expense of humanity and the Constitution, but they cannot press *his mind*, — they cannot press the heroic ardour of a British sailor; and instead of a fleet to carry terror all round the globe, the Admiralty may not be able much longer to amuse us with even the peaceable unsubstantial pageant of a review.* FINE AND IMPRISONMENT! The man deserves a PALACE instead of a PRISON who prevents the palace built by the public bounty of his country from being converted into a dungeon, and who sacrifices his own security to the interests of humanity and virtue.— And now, my Lords, I have done; but not without thanking your Lordships for the very indulgent attention I have received, though in so late a stage of this proceeding, and notwithstanding my great incapacity and inexperience. I resign my client into your hands, and I resign him with a well-founded confidence and hope; because that torrent of corruption which has unhappily overwhelmed every other part of the Constitution is, by the blessing of Providence, stopped HERE by the sacred independence of the Judges. I KNOW that your Lordships will determine ACCORDING TO LAW; and therefore, if an information should be suffered to be filed, I shall bow to the sentence, and shall consider this meritorious publication to be, indeed, an offence against the laws of this country; but then I shall not scruple to say, that it is high time for every honest man to remove himself from a country in which he can no longer do his duty to the public with safety; — where cruelty and inhumanity are suffered to impeach virtue, — and where vice passes through a court of justice unpunished and unreproved."

Effect produced.

The impression made upon the audience by this address is said to have been unprecedented; and I must own that, all the circumstances considered, it is the most wonderful forensic effort of which we have any account in our annals. It was the *début* of a barrister just called and wholly unpractised in public speaking — before a Court crowded with the men of

* There had just before been a naval review at Portsmouth.

the greatest distinction, belonging to all parties in the state. He came after four eminent counsel, who might be supposed to have exhausted the subject. He was called to order by a venerable Judge, whose word had been law in that Hall above a quarter of a century. His exclamation, "I will bring him before the Court," and the crushing denunciation of Lord Sandwich, in which he was enabled to persevere, from the sympathy of the by-standers, and even of the Judges, who in strictness ought again to have checked his irregularity — are as soul-stirring as anything in this species of eloquence presented to us by ancient or modern times. I hardly less admire his quiet peroration, which, with an appearance of modesty and submission, breathes confidence and defiance. A commonplace declaimer would have thought it necessary to conclude with some noisy mouthing sentences. How much more effective must have been the lowered tone of the man who knew instinctively to touch the feelings — speaking in an assembly where every look was fixed upon him — where every syllable he uttered was eagerly caught up — where breathing was almost suspended, — and as often as he paused a flake of snow would have been heard to fall.

Need I mention, that the rule was discharged with costs? It would be easy to narrate the congratulations which the young counsel received in Court, and his ovation when on retiring he walked through the Hall. But who could adequately describe his own feelings, when all his anxieties were over, and he knew that he had conquered fame for himself, and secured all worldly comforts to those who were dear to him? This last consideration I believe was nearest his heart. Being asked, how he had the courage to stand up so boldly against Lord Mansfield, he answered, that he thought his little children were plucking his robe, and that he heard them saying, "Now, father, is the time to get us bread."

Erskine's own account of his *début*.

He himself is said, many years after at the "King of Clubs," to have given the following gay account of his start in the profession. "I had scarcely a shilling in my pocket when I got my first retainer. It was sent to me by a Captain Baillie, of the navy, who held an office at the board of Greenwich Hospital, and I was to show cause, in the Michaelmas

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Term, against a rule that had been obtained in the preceding term, calling upon him to show cause why a criminal information for a libel reflecting on Lord Sandwich's conduct as governor of that charity should not be filed against him. I had met, during the long vacation, this Captain Baillie at a friend's table, and after dinner I expressed myself with some warmth, probably with some eloquence, on the corruption of Lord Sandwich as First Lord of the Admiralty, and then adverted to the scandalous practices imputed to him with regard to Greenwich Hospital. Baillie nudged the person who sat next to him, and asked who I was? Being told that I had just been called to the Bar, and had been formerly in the navy, Baillie exclaimed with an oath, 'Then I'll have him for my counsel!' I trudged down to Westminster Hall, when I got the brief, and being the junior of five, who would be heard before me, never dreamed that the Court would hear me at all. Dunning, Bearcroft, Wallace, Bower*, Hargrave, were all heard at considerable length, and I was to follow. Hargrave was long-winded, and tired the Court. It was a bad omen: but, as my good fortune would have it, he was afflicted with the strangury, and was obliged to retire once or twice in the course of his argument. This protracted the cause so long that, when he had finished, Lord Mansfield said that the remaining counsel should be heard the next morning. This was exactly what I wished. I had the whole night to arrange, in my chambers, what I had to say the next morning, and I took the Court with their faculties awake and freshened, succeeded quite to my own satisfaction, (sometimes the surest proof that you have satisfied others,) and as I marched along the Hall, after the rising of the Judges, the attorneys flocked around me with their retainers. I have since flourished, but I have always blessed God for the providential strangury of poor Hargrave." †

* Erskine, or more likely his reporter, had forgot the names of the counsel. Dunning was on the other side; and Wallace and Bower were not engaged in the cause.

† Adair's Clubs of London. On other occasions he varied the circumstances a good deal, and he carried the number of retainers which he received before he left the Hall to the number of SIXTY-FIVE, inducing a suspicion that they had multiplied from narration.

He is at once in first-rate business.

Briefs and fees — large and small — now flowed in a continual stream into the chambers of the counsellor who had so astonished the world. He was at once in full business, and it should be recorded, for the honour of the "long robe," that, although he passed over the heads of many who had fully established themselves, or were gradually beginning to establish themselves, in Westminster Hall, there was no caballing against him; he had not even to encounter envy or ill-will; he was hailed by his competitors as conferring new honour upon them; and bearing his faculties most meekly, he became, and ever continued, a favourite with all ranks of the profession.

He practised in the King's Bench. There he was very courteously treated by Lord Mansfield, who rejoiced to see the young officer of the Royals, whom he had invited to sit by him at the Assizes, transformed into the most eminent advocate at the English Bar. To this venerable peer, and to all other Judges, Erskine behaved with respect, — but with uniform independence and freedom, — never basely surrendering a cause in which he knew that he was right, with a view to succeed, by favour, in others in which he might be wrong.

Jan. 1779. He is counsel on the trial of Admiral Keppel.

In the beginning of the following year he gained additional *éclat* as counsel in the famous court-martial, held at Portsmouth, on Admiral Lord Keppel, to try the charges tardily brought against him by Sir Hugh Palliser, of incapacity and misconduct in the battle off Ushant, with the French fleet under the command of Count d'Orvilliers. This case, bearing a great resemblance to that of Admiral Byng, excited quite as much interest, and many thought would have the same fatal termination. The party accused, however, being not only innocent but belonging to the Whigs, who from the disasters of the war had risen much in public opinion, was extremely popular. For his very triumphant acquittal he was greatly indebted to his advocate. He wished to be defended by Dunning and Lee; but they, giving him their general advice as to the line of defence he should take, recommended Erskine, who, in addition to his abilities, had

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the advantage of being well acquainted with naval language and naval manœuvres. The trial lasted thirteen days,— during all which time Erskine exerted himself for his client with unabated zeal and consummate discretion. He was not allowed to examine the witnesses *vivâ voce*, nor to address the Court; but he suggested questions, which were put in writing, — and he composed the speech which Lord Keppel delivered on the merits of his case. Considering the plain understandings to which this was addressed, I think admirable tact is discovered by its simplicity*: "After forty years spent in the service of my country," (said the hoary-headed Admiral in his peroration, which seemed to be the genuine effusion of his own mind) "little did I think of being brought to a court-martial to answer to charges of misconduct, negligence in the performance of duty, and tarnishing the honour of the British navy. These charges, Sir, have been advanced by my accuser. Whether he has succeeded in proving them or not, the Court will determine. Before he brought me to a trial, it would have been candid in him to have given vent to his thoughts, and not, by a deceptive show of kindness, to lead me into the mistake of supposing a friend in the man who was my enemy in his heart, and was shortly to be my accuser. Yet, Sir, after all my misconduct,— after so much negligence in the performance of duty, and after tarnishing so deeply the honour of the British navy, my accuser made no scruple to sail a second time with the man who had been the betrayer of his country. Nay, during the time we were on shore, he corresponded with me on terms of friendship; and even in his letters he approved of what had been done—of the part which he now condemns, and of the very negligent misconduct, which has since been so offensive in his eyes. Such behaviour, Sir, on the part of my accuser, gave me little reason to apprehend an accusation from him. Nor had I any reason to suppose that the State would crimi-

* In a memoir of Erskine in the "Gentleman's Magazine," it is said that, "having drawn up Admiral Keppel's defence, he personally examined all the Admirals and Captains of the fleet, and satisfied himself that he could substantiate the innocence of his client, before the speech which he had written for him was read."

nate me. When I returned, his Majesty received me with the greatest applause. Even the First Lord of the Admiralty gave his flattering testimony to the rectitude of my conduct, and seemed, with vast sincerity, to applaud my zeal for the service. Yet, in the moment of approbation, it seems as if a scheme was concerting against my life; for, without any previous notice, five articles of charge were exhibited against me by Sir Hugh Palliser, who, most unfortunately for his cause, lay himself under an imputation for disobedience of orders, at the very time when he accused me of negligence. This, to be sure, was a very ingenious mode of getting the start of me. An accusation exhibited against a commander-in-chief might draw off the public attention for neglect of duty in an inferior officer. I could almost wish, in pity to my accuser, that appearances were not so strong against him. The trial has left my accuser without excuse, and he now cuts that sort of figure which I trust in God all accusers of innocence will ever exhibit! As to this Court, I entreat you, gentlemen, who compose it, to recollect that you sit here as a court of honour, as well as a court of justice; and I now stand before you, not merely to save my life, but for a purpose of infinitely greater moment—to clear my fame. My conscience is perfectly clear—I have no secret machination, no dark contrivance, to answer for. My heart does not reproach me. As to my enemies, I would not wish the greatest enemy I have in the world to be afflicted with so heavy a punishment as my accuser's conscience."

On the finishing of this speech, the Hall resounded with shouts of approbation. The Court, by an unanimous verdict, fully and honourably acquitted the Admiral, affirming that, far from having sullied the honour of the navy, he had acted as became a brave, judicious, and experienced officer; and the cities of London and Westminster were illuminated two successive nights,—the mob breaking into the house and destroying the furniture of Sir Hugh Palliser, and burning him in effigy.

Erskine did not on this occasion obtain much public applause, as the share he had had in the conduct of the defence

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Generosity of his client.

was little known; but from his grateful client he received the munificent present of a thousand pounds. The correspondence between them is highly creditable to both:

"Audley Square, Feb. 23. 1779.

"MY DEAR SIR,

"Do me the favour to accept the inclosed notes*, as an acknowledgment of the zealous and indefatigable industry you have shown in the long and tedious course of my court-martial. It is to your unremitting labours, together with the assistance of Mr. Dunning and Mr. Lee, that I chiefly owe its having been attended with so honourable a conclusion. I shall be very happy, if I have been in any degree the means of furnishing you with opportunities of showing those talents, which only wanted to be made known to carry you to the summit of your profession. I shall ever rejoice in this commencement of a friendship which I hope daily to improve.

"I am, &c.,

"A. KEPPEL."

Erskine, greatly delighted, called in Audley Square to return thanks in person; but not finding the Admiral at home, wrote the following touching acknowledgment in the porter's hall:—

"Audley Square, Tuesday afternoon.

"You must no doubt, my dear Sir, have been very much surprised at receiving no answer to your most generous letter, but, I trust, you are well enough acquainted with my temper and feelings to find out the reason, and to pardon me; I was indeed altogether unable to answer it. I could not submit to do injustice to my gratitude and affection, and was therefore obliged to be silent, till I could wait upon you in person; and having missed you, must be silent still. I shall, therefore, only say, that the generous present you have sent me is out of all kind of bounds and measure, even if the occasion had afforded me an opportunity of rendering them; how much the more when your own ability and the absurdity of the occasion wholly disappointed my zeal. At all events, the honour of attending Admiral Keppel would have been in itself a most ample reward—an honour which, whatever my future fortunes may be, I shall ever consider as the brightest and happiest in my life, and which my children's children will hereafter claim as an inheritance.

* Two bank notes of 500*l.* each.

"I do most sincerely pray God that every blessing may attend you, and that you may be spared for the protection of a country, which has proved itself worthy of protection. My heart must ever be with you. Adieu, my dear Sir, and believe me to be, with the greatest respect and regard,

"Your most grateful and affectionate

"humble servant,

"T. ERSKINE."

He then, with a boyishness of disposition which distinguished him all his life, hurried to Bromley, and showing his wealth to the Reynolds's, exclaimed, "*Voilà!* the nonsuit of *cow* beef, my good friends."

He joins the Home Circuit, — His prophecy.

This Spring he joined the Home Circuit, where his fame had preceded him, and he was immediately in full employment. Riding over a blasted heath between Lewes and Guildford with his friend William Adam, afterwards Lord Chief Commissioner of the Jury Court in Scotland,—(whether from some supernatural communication, or the workings of his own fancy I know not) he exclaimed after a long silence, "Willie, the time will come when I shall be invested with the robes of Lord Chancellor, and the Star of the Thistle shall blaze on my bosom!"

May 10. 1779. His speech at the bar of the House of Commons against the Almanack monopoly.

Soon after his return to London he was retained as counsel at the bar of the House of Commons, against a bill which excited considerable interest, as it touched the liberty of the press. Under a grant from King James I., the Stationers' Company and the Universities of Oxford and Cambridge had enjoyed the exclusive right of printing almanacks, till its validity was denied by Mr. Carnan, a bookseller in St. Paul's Churchyard, who published other almanacks cheaper, more copious, and more correct. Legal proceedings being instituted against him, it was solemnly decided by the Court of Common Pleas and the Court of Exchequer, that the grant was void. Lord North, Prime Minister and Chancellor of the University of Cambridge, thereupon introduced a bill into Parliament to vest the monopoly in the parties who had so long usurped it. Erskine's attack upon this unjust bill appears in the printed collection of his speeches, which he

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himself revised, and it was not only highly esteemed by himself, but it has been loudly praised by others. I confess, however, that its merits seem to me to have been considerably overrated. Though sensible and judicious, it deals in common places, and might have been made by a very inferior declaimer. Nevertheless, the tale is told,—so marvellous to those who have witnessed the utter neglect with which the best speeches of counsel at the bar of either chamber of Parliament are treated, that "the House remained crowded till he had concluded, and that the rejection of the bill by a large majority, upon a division which immediately afterwards took place, was entirely to be ascribed to his eloquence." Lord Eliot, Member for Cornwall, who at the desire of Lord North his brother-in-law had come from the extreme west to support the bill, certainly divided against it, declaring in the lobby that "after Mr. Erskine's speech he found it impossible to do otherwise." But, although the advocate cannot be denied the singular glory of having influenced one vote by argument, I suspect that the result is to be ascribed to the contemplated job which was finally perpetrated, whereby the monopolists were indemnified for their loss out of the public revenue.*

He is counsel in a duelling case.

His next appearance of which we have an account was as counsel for Lieutenant Bourne of the Royal Navy, brought up before the Court of King's Bench for having sent a challenge to Admiral Sir James Wallace, his commanding officer, who was said to have used him very tyrannically. The circumstances of the case are devoid of interest, but Erskine's speech must ever be curious, as showing how, even before English judges sitting on their tribunal, a practice could be spoken of which I hope will speedily be condemned as much by the fashionable world, as by law, reason, and religion. Thus he meekly began—being about to declare the conduct of the defendant to be so meritorious that he himself under the same circumstances would have pursued his old commander, Sir John Lindsay, the nephew of Lord Mansfield, through created space, that he might force him

* 20 Parl. Hist. 608—621. Ersk. Speeches, i. 38.

into the field:—"I build my principal hope of a mild sentence upon much more that will be secretly felt by the Court than may be decently expressed from the Bar; for though I am convinced that your Lordships have all those nice sensations which distinguish men of honour from the vulgar, and that your genuine feelings for the defendant must be rather compassion and approbation than resentment, yet I cannot address myself to your Lordships sitting on that bench, and clothed in the robes of magistracy, in the same language by which I think I could insure your favour to my client in another place. It is indeed very unfortunate for the gentleman whose cause I am defending, that your Lordships are bound, as judges of the law, to consider that as a crime in him against the society in which he lived, which yet, if he had not committed, that very society would have expelled him, like a wretch, from its communion; and that you must speak to him the words of reproach and reprobation for doing that which, if he had not done, your Lordships would scorn to speak to him at all as private men. Surely, my Lords, this is a harsh and a singular situation..... I profess to think, with my worthy friend who spoke before me, that the practice of private duelling, and all that behaviour which leads to it, is a high offence against the laws of God; and I agree with that great Prince (Frederick II. of Prussia), that it is highly destructive of good government amongst men,—a practice certainly unknown to the most refined and heroic people the revolutions of time and manners have produced in the world,—and by which the most amiable man in society may be lost by an inglorious death, depending upon mere chance. *But though I feel all this, as I think a Christian and a humane man ought to feel it, yet I am not ashamed to acknowledge that I would rather be pilloried by the Court in every square in London, than obey the law of England, which I thus profess so highly to respect, in a case where that custom, which I have reprobated, warned me that the public voice was in the other scale.* My Lords, every man who hears me feels that so would he; for, without the respect and good opinion of the world we live in, no matter upon

what foundation it is built, life itself is a worse imprisonment than any which the laws can inflict; and the closest dungeon to which a court of justice can send an offender, is far better with the secret pity and even approbation of those that send him there, than the range of the universe with the contempt and scorn of its inhabitants." After referring to voluminous affidavits to his client's character, he continued:—"A man in possession of such a character as this, justly acquired, will not consent to sacrifice it to the pride of any man; it is a just and sacred pledge, and he to whom God in his providence has given it, deserves every sort of reproach if he parts with it in a light cause. Unquestionably, the captain may desire every officer, whose duty it is to walk the quarter-deck, to go to the top of the mast of the ship; but he cannot do that without an adequate cause, and without subjecting himself to the disgrace and punishment of a court-martial. I have had the honour to sail with a man who is an honour to that profession,—a gentleman, I believe, the most accomplished that this nation or world can produce, and who has the honour to be nearly allied to your Lordship. Under him I learned what idea ought to be entertained on this subject, and what respect ought to be paid to officers in all stations; and the result of what I saw there, joined with my own original feelings, is this—that, *although I was placed on board his ship, to reverence him as my father, by the command of my own, and although at this hour I do reverence him in that character, yet I feel that if he had treated me in that manner, I should not have made Jamaica or Bath the limit of my resentments, but would have sought him through all created space, till he had answer made, and done me justice!* There are some injuries which even Christianity doth not call upon a man to forgive or to forget, because God, the author of Christianity, has not made our natures capable of forgiving or forgetting them. I must plead for the infirmities of human nature, and beseech your Lordships once more to consider what the honour of an officer is; consider that, and say what punishment this gentleman deserves. You have before you a young military man, jealous, as he ought to be, of his fame

and honour, treated with the grossest indignity by his superior officer, smothering his honest resentment as long as the superior duties of military service required that painful sacrifice, — and afterwards pursuing the man who had dishonoured him, with a perseverance, certainly in criminal opposition to the law, but in obedience to what I may, without offence even here, term the generous infirmity in his nature, nourished by the long-established, though erroneous, customs of the world. . . . I rely with confidence upon the justice, the humanity, and the honour of the Court!" *

All that Erskine had yet done perhaps might have been accomplished by a skilful and fortunate rhetorician. He had now an opportunity of addressing to the feelings of a jury that fine union of argument and passion, which constituted the character of his oratory, and of showing that by his intuitive knowledge of the principles of criminal law, by his steady patriotism and his undaunted courage, the liberties of his country, while he survived, were to be in no danger from the most violent assault that could be made upon them, through a perversion of judicial procedure.

Lord George Gordon prosecuted for high treason.

Lord George Gordon, an ignorant and enthusiastic, but very well-meaning young nobleman, having testified a great horror of popery, had been elected "President of the Protestant Association," and at the head of upwards of forty thousand persons, had proceeded to the House of Commons to present a petition of the "Associated Protestants" for a repeal of certain slight modifications recently introduced into the atrocious penal code which then ground down our Roman Catholic fellow-citizens. This meeting, though rather tumultuary, had no aim against the Constitution of the country, and all who belonged to it were specially loyal to the King, from sympathy of sentiment on religious subjects; but, unfortunately, it ushered in the fatal riots which for so many days desolated the metropolis, which shook for a time even the foundations of the Government, and the recital of which under the misnomer of "Lord George Gordon's riots" still frightens us. Although guilty of imprudence in exciting the

* Townsend's Eminent Judges, i. 412.

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fanaticism of the multitude,—when he saw among them any inclination to violate the law, he exerted himself to restore order, and he accompanied the Sheriffs of London into the City to exercise his influence among his followers for that purpose. Yet, when peace was restored, he was committed to the Tower, and he was indicted for high treason in levying war against the Crown. He certainly was in very great jeopardy, for a universal panic had prevailed for some days among all those who were to be his jurymen; they had expected that their houses would be burnt down, and their wives and daughters would be violated; they actually had seen the prisons broken open, fires blazing, and blood flowing in various parts of the metropolis, while the magistrates were paralysed with fear, and the soldiery could not act without orders— all these calamities being imputed to "the President of the Protestant Association." The Government likewise thought that it was necessary for the future tranquillity of the country that a signal sacrifice should be offered up to the offended majesty of the laws, however much the victim might be deserving of pity; and, in consequence, the prosecution was conducted with all the power of the Crown, and with an earnest desire to obtain a conviction. But Erskine was counsel for the prisoner.

Erskine counsel for the prisoner.

Regularly trained to the profession of the law—having practised thirty years at the bar—having been Attorney General above seven years—having been present at many trials for high treason, and having conducted several myself,—I again peruse with increased astonishment and delight the speech delivered on this occasion by him, who had recently thrown aside the scarlet uniform of a subaltern in the army, which he had substituted for the blue jacket of a midshipman thrust upon him while he was a school-boy. Here I find not only great acuteness, powerful reasoning, enthusiastic zeal, and burning eloquence, but the most masterly view ever given of the English law of high treason,—the foundation of all our liberties.

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The trial came on in the Court of King's Bench before Lord Mansfield and his brethren. There had been a strange se-

lection of a leading counsel against the Crown in Mr. Kenyon (afterwards Lord Kenyon), who, though well acquainted with the technicalities of real property, and the practice of Courts of Equity, had no talent for public speaking, and was entirely devoid of constitutional learning. Against the case made for the prosecution, he delivered a very honest, but very inefficient speech; and when he sat down, the friends of Lord George were in an agony of apprehension. According to the usual routine, Erskine ought to have followed immediately; but to give the jurymen time to recover from the confusion into which they had been thrown, he prayed that, according to one precedent to be found in the "State Trials," his speech ought to be postponed till after the evidence for the prisoner had been closed. To this the Court assented, and a great many witnesses were called, the weight of whose evidence as to the personal demeanour of the prisoner was much weakened with the jury by what they stated, on cross-examination, respecting the outrages which were actually committed.

Erskine's speech for Lord George Gordon.

Erskine rose a little after midnight, and not only instantly dispelled all feeling of exhaustion and lassitude from the minds of the jury, the Judges, and the bystanders, but, while he spoke, they seemed all to be inspired with a new etherial existence, and they listened as if addressed by some pure Intelligence of Heaven, who had appeared to instruct them!

His speech is too closely-reasoned and concatenated to allow me to give any adequate notion of it by extracts. After a most captivating proemium, he proceeds to lay down the law in the able manner to which I have referred, asserting nothing that could be gainsaid — but artfully adapting the points he made most salient to the facts on which he was to comment. Thus he felicitously referred to the destruction of the house of the presiding Judge, during these riots, — drawing from it an argument in favour of his client: "Can any man living believe that Lord George Gordon could possibly have excited the mob to destroy the house of that great and venerable magistrate, who has presided so long in this great

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and high tribunal, that the oldest of us do not remember him with any other impression than the awful form and figure of justice; a magistrate, who had always been the friend of the Protestant Dissenters against the ill-timed jealousies of the Establishment;—his countryman too; and, without adverting to the partiality not unjustly imputed to men of that country, a man of whom any country might be proud?—No, gentlemen; it is not credible that a man of noble birth and liberal education (unless agitated by the most implacable personal resentment, which is not imputed to the prisoner), could possibly consent to this burning of the house of Lord Mansfield." He then reviewed the whole of the evidence, varying his tone from mild explanation to furious invective,—always equally skilful and impressive, and ever carrying the sympathies of his hearers along with him in the most daring flights of his eloquence. Now was witnessed the single instance recorded in our judicial annals, of an advocate in a court of justice introducing an oath by the sacred name of the Divinity, —and it was introduced not only without any violation of taste or offence to pious ears, but with the thrilling sensations of religious rapture, caught from the lips of the man—who, as if by inspiration, uttered the awful sound. Arguing upon the construction of certain words attributed to Lord George Gordon, he exclaimed, "But this I will say, that he must be a *ruffian*, and not a lawyer, who would dare to tell an English jury that such ambiguous words, hemmed closely between others not only innocent, but meritorious, are to be adopted to constitute guilt by rejecting both introduction and sequel." Then, after noticing the offer made to the Government by the prisoner himself to quell the disturbance, he ventured upon the following bold and extraordinary sentence: "I say, BY GOD, that man is a ruffian, who shall, after this, presume to build upon such honest, artless conduct, as an evidence of guilt." The sensation produced by this daring appeal to the feelings of the jury, and by the magic of the voice, the eye, the face, the action with which it was uttered, is related by those present on this memorable occasion to have been electrical. Some have supposed that the oath was premeditated; but "in-

His famous oath in addressing the jury.

tuitive and momentary impulse could alone have prompted a flight which it alone could sustain; and as its failure would, indeed, have been fatal, so its eminent success must be allowed to rank it among the most famous feats of oratory."*

When he had shown the futility of all the supposed proofs relied upon for the Crown, and dwelt upon the strong testimony adduced to establish the innocence of the prisoner, he thus proceeded: — "What, then, has produced this trial for high treason? What! but the inversion of all justice, by judging from consequences, instead of from causes and designs? What! but the artful manner in which the Crown has endeavoured to blend the petitioners in a body, and the zeal with which an animated disposition conducted it, with the melancholy crimes that followed — crimes which the shameful indolence of our magistrates, which the total extinction of all police and all government suffered to be committed in broad day, in the delirium of drunkenness, by an unarmed banditti, without a head, without plan or object, and without a refuge from the instant gripe of justice; a banditti, with whom the Associated Protestants and their President had no manner of connection, and whose cause they overturned, dishonoured, and ruined? How unchristian, then, is it to attempt, without evidence, to infect your imaginations, who are upon your oaths dispassionately and disinterestedly to try the offence of assembling a multitude to petition for the repeal of a law, — by blending it with the subsequent catastrophe, on which every man's mind may be supposed to retain some degree of irritation! O fie! O fie! it is taking advantage of all the infirmities of our nature! Do they wish you, while you are listening to the evidence, to connect it with consequences in spite of reason and truth, to hang the millstone of prejudice round his innocent neck to sink him? If there be such men, may God forgive them for the attempt, and inspire you with fortitude and wisdom to do your duty to your fellow-citizens with calm, steady, reflecting minds. I may now, therefore, relieve you from the pain of hearing me any

* Ed. Review, vol. xvi. p. 108.

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longer, and be myself relieved from a subject which agitates and distresses me. Since Lord George Gordon stands clear of every hostile act or purpose against the legislature of his country or the rights of his fellow-subjects, — since the whole tenour of his conduct repels the belief of the traitorous intention charged by the indictment, — my task is finished. I shall make no address to your passions. I will not remind you of the long and rigorous imprisonment he has suffered; I will not speak to you of his great youth, of his illustrious birth, or of his uniformly animated and generous zeal in Parliament for the Constitution of his country. Such topics might be useful in the balance of a doubtful case. At present, the plain and rigid rules of justice and truth are sufficient to entitle me to your verdict: and may God Almighty, who is the sacred author of both, fill your minds with the deepest impression of them, and with virtue to follow those impressions! You will then restore my innocent client to liberty, and me to that peace of mind, which, since the protection of his innocence in any part depended upon me, I have never known."

Perhaps there is nothing in the speech more admirable than the soft, quiet, complacent key in which it concludes. Without arrogance or presumption, he considers that the cause is won — no further exertion is necessary, — "*radit æquor liquidum.*" By a quick interchange of thought the sentiment is imbibed by the jury, that their verdict is already unanimously settled, and that they have only to go through the form of pronouncing it. — Accordingly they were proof against the reply of the Solicitor General; and after a rather severe summing up from Lord Mansfield, at a quarter past five in the morning they said — NOT GUILTY. All reasonable men rejoiced. Even Dr. Johnson said "he was glad Lord George Gordon had escaped, rather than that a precedent should be established for hanging a man for *constructive treason*;" "which," adds Boswell, "in consistency with his true, manly, constitutional Toryism, he considered would be a dangerous engine of arbitrary power."* If the precedent had been now established,

* Vol: iv. 92.

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Acquittal of Lord George Gordon.

it certainly would have been followed in 1794, and our lost liberties could only have been restored by some dreadful convulsion. But a just notion of the offence of compassing the death of the King, and of levying war against him in his realm, was now impressed upon the English nation by the exertions of Erskine; and afterwards, in the "Reign of Terror," when the grand struggle came, he was enabled to march from victory to victory.*

* State Trials, vol. xxi. 485—647.

CHAPTER CLXXVIII.

CONTINUATION OF THE LIFE OF LORD ERSKINE TILL THE CONCLUSION OF THE CASE OF THE DEAN OF ST. ASAPH.

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Erskine as a politician.

We are now to see our illustrious advocate on the political stage, — where his success was by no means so brilliant. He was of a Whig family, and he ever adhered steadily to the Whig party. Its three great leaders, when he appeared in public life, were all in the meridian of their fame, — the "Coalition" not yet having dimmed the lustre of Fox's name, — Burke not yet having been disturbed from his liberal course by the French Revolution, — and the fatal web of pecuniary embarrassment not yet having been wound round the soul of Sheridan, leading him to discreditable actions and degrading habits. These men rapturously hailed the rising genius of one likely to prove so powerful an auxiliary; but they advised that with his full occupation in his profession he should not enter Parliament either while Lord North was minister, or during the Governments of Lord Rockingham or Lord Shelburne. When the "Coalition" was formed, however, a long tenure of power was expected by his friends, his promotion to be a law officer of the Crown on the first vacancy was promised to him, and his assistance was wanted against a host of lawyers who, joining the Opposition, were now obstructing business in the House of Commons, although the Ministry could command large majorities upon a division.

He is returned to Parliament for Portsmouth. Nov. 20. 1783.

There was some difficulty in finding a seat for the aspirant, but Sir William Gordon, who represented Portsmouth, was prevailed upon to take the Chiltern Hundreds, in consideration of a comfortable provision made for him, and Erskine succeeded him, making himself popular with the inhabitants, by boasting of his maritime education, and his warm attachment to the naval service. The "Point" afforded scope for

innumerable jests against him from Jekyll, and his other friends in Westminster Hall; but he bore them all with great good humour, and took off the effect of a bad pun by a worse.*

Anticipations as to his success in the House of Commons.

There was great eagerness to hear his maiden speech in St. Stephen's Chapel. Almost all mankind anticipated that he would still raise his reputation by being a match for the younger Pitt, who had recently, all at once, placed himself in the very highest class of parliamentary orators; but a few judicious men, who knew Erskine best, had misgivings as to his success in a new field, in which, if not higher, very different qualifications were required from those he had hitherto displayed. Thus wrote one of his professional friends to another detailing the gossip of the robing-room:—

"Nov. 3. 1783.

"Wallace is gone down to Teignmouth, the place where Dunning died,—in all probability on the same errand. Everybody says that Erskine will be Solicitor General, and if he is, and indeed, whether he is or not, he will have had the most rapid rise that has been known at the Bar. It is four years and a half since he was called, and in that time he has cleared 8000*l.* or 9000*l.*, besides paying his debts,—got a silk gown, and business of at least 3000*l.* a year—a seat in Parliament—and over and above, has made his brother Lord Advocate. For my part I have great doubts whether his coming into Parliament was a wise thing. He sacrificed his House of Commons business, which was very profitable. He has several of Burke's defects, and is not unlikely to have his fate, and the expectation from him will be too great to be satisfied. We expect a match between him and Pitt, and another between Fox and Flood."

His maiden speech.

Deep was the disappointment of the Opposition—loud was the exultation of the Ministers—when the new champion in the political arena had essayed his prowess.—It is a curious coincidence that Erskine and John Scott, afterwards Lord Eldon, of whom but slender expectations were then enter-

* Jekyll said to him, "Having been long a wanderer, I hope you *will now stick to the Point.*" He answered, "Yes, I have an eye to the *pole*, since I know where the *Pointers* are." My readers have probably heard of the Point at Portsmouth, and its inhabitants.

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His failure.

tained, first addressed the House of Commons in the same debate, — upon the introduction of Mr. Fox's famous India Bill. Alas! neither of them raised the reputation of lawyers for parliamentary oratory. The Equity man took the precedence, but was dull and prosy. Our great common lawyer despised such an antagonist, and lay by for Pitt — but (*impar congressus!*) disgrace fell on both sides of Westminster Hall. The speech of the honourable member for Portsmouth could not have been so wretchedly bad as it is represented in the Parliamentary History, — from which I cannot extract a sentence of any meaning, except the concluding one, — that "he considered the present bill as holding out the helping, not the avenging hand of Government." * But all agreed in considering the effort a failure. — The most favourable account of it I find is by Sir Nathaniel Wraxall: "Mr. Erskine, who, like Mr. Scott, has since attained to the highest honours and dignities of the Bar, first spoke as a member of the House of Commons in support of this obnoxious measure. His enemies pronounced the performance tame and destitute of the animation which so powerfully characterised his speeches in Westminster Hall. They maintained that, however resplendent he appeared as an advocate while addressing a jury, he fell to the level of an ordinary man, if not below it, when seated on the Ministerial bench, where another species of oratory was demanded to impress conviction or to extort admiration. To me, who, having never witnessed his jurisprudential talents, could not make any such comparison, he appeared to exhibit shining powers of declamation." †

Pitt's display of contempt for Erskine in the House of Commons.

According to one most graphic representation of the scene, Erskine's faculties upon this occasion were paralysed by the by-play of his opponent: "Pitt, evidently intending to reply, sat with pen and paper in his hand, prepared to catch the arguments of this formidable adversary. He wrote a word or two. Erskine proceeded; but with every additional sentence

* 23 Parl. Hist. 1215. In answer to the argument from the violation of the charters of the East India Company, he seems to have taunted Pitt with the little respect he showed for the ancient privileges of the rotten boroughs, by his plan of Parliamentary Reform. This could not have been well received on either side of the House.

† Memoirs, ii. 436.

Pitt's attention to the paper relaxed, his look became more careless, and he obviously began to think the orator less and less worthy of his attention. At length, while every eye in the House was fixed upon him, with a contemptuous smile he dashed the pen through the paper and flung them on the floor. Erskine never recovered from this expression of disdain;—his voice faltered, he struggled through the remainder of his speech, and sank into his seat dispirited and shorn of his fame."*—A discussion is said to have arisen at the time, whether Pitt's pantomimic display of contempt was premeditated, or arose from the feeling of the moment; but the probability is, that, expecting an antagonist from whose discomfiture he anticipated fresh renown, he really had been preparing in good earnest for the encounter, and that, more displeased than gratified at the tyro's political feebleness, he threw away the pen and the paper as the readiest mode of marking his disappointment.

Erskine and Pitt together at the Bar.

While Pitt remained at the Bar they had been apparently very good friends, although Mr. Espinasse conjectures (I think without reason) that the future Prime Minister had then conceived a grudge against the future Chancellor. "Pitt," says he, "had been once in a cause with him at Westminster, and attended a consultation. Erskine was the kindest of leaders, and the most gentle and encouraging to his juniors; but possibly some of his vagaries had offended the precise and serious young gentleman, who perhaps felt somewhat of the alarm that I have known the clients of the great advocate feel on attending a consultation on their case. Certain it is that Pitt never justly appreciated that illustrious man, and always took a pleasure in mortifying him in the House." It must be matter of conjecture which would have had the advantage if they had been rivals in Westminster Hall—but it cannot be denied that Erskine was much inferior in power and splendour as a parliamentary debater. "He was overpowered by the commanding tone, the sarcastic

* Croly's Life of George IV.

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Erskine's dread of Pitt in parliament.

invective, and the cutting irony of Pitt."* "At a dinner given by Mr. Dundas at Wimbledon, Addington, Sheridan, and Erskine being present, the last was rallied on his not taking so prominent a position in the debates in Parliament as his high talents and reputation entitled him to assume, — when Sheridan said, "I'll tell you how it happens, Erskine: you are afraid of Pitt, and that is the flabby part of your character." †

Nov. 27. 1783. Erskine's second speech on the India Bill.

Erskine spoke again on the second reading of the Bill, and with better effect. He now took an able view of our territorial acquisitions in the East, contending that they belonged to the Crown of Great Britain, and that the Parliament of Great Britain had a right to regulate the government of them as part of the British Empire—ridiculing the notion that the East India Company was now to be dealt with as a private mercantile partnership. He further showed that charters such as those granted to the East India Company were necessarily subject to the control of Parliament, and that these very charters had been on several former occasions modified by Parliament for the benefit of our fellow-subjects in India, without any complaint of bad faith, or unconstitutional legislation. Having then vindicated the details of the measure, he thus concluded: "I declare solemnly, upon my honour, (which has never, I thank God, been called in question in public or in private,) that I give my support most conscientiously to this urgently necessary reform. My original opinion in its favour is confirmed by the support it has received, in conduct and in argument, from the wise and eloquent statesman who presented it to the House, — whose talents seem to be formed by Providence to retrieve this still great country from its fallen and oppressed condition. Let my right honourable friend go on with firmness, and risk his office at every step he takes; and I will combat, as I now do, by his side, ready to sacrifice every prospect of ambition. Let him be guided by his own manly understanding, and the

* Gentleman's Magazine.

† Pellew's Memoirs of Lord Sidmouth.

integrity of his own heart, and I will stand for ever by him, or sink with him in his fall.*

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Erskine in Opposition when Pitt became Prime Minister.

The Bill being defeated in the House of Lords, and the Coalition Ministry being dismissed, Erskine was true to his pledge. He started in Opposition before the new ministerial arrangements were completed, by moving a resolution, "That this House will consider as an enemy to the country any person who shall presume to advise his Majesty to dissolve Parliament in the present juncture of affairs." The gallery having been shut during this debate, which was of a very inflammatory nature, his speech is lost, but we know that he carried his motion by a majority of 73.† On a subsequent day he moved an address to the Crown, founded on this resolution, contending, in a speech of great length, but not much distinguished for constitutional learning, that the House of Commons might properly interfere with the exercise of any of the prerogatives of the Crown, and that a dissolution at that time would be highly injurious to the interests of the public. He smartly observed, "Should parliament be now dissolved, and my constituents should ask me *why?* I must really be at a loss for an answer. They may say, 'Is it because the supplies have been withheld?' I must reply, 'That cannot be the reason, for the Commons have liberally granted all the supplies that Government has called for.' 'Have the Commons then thrown any obstacle in the way of his Majesty's Executive Government?' 'So far is this from being the case, I must say that in all their deliberations they have gone hand in hand with his Majesty's Ministers, and never negatived a single proposition that has been made to them.' If I am then asked, 'Is it because they have no confidence in his Majesty's Ministers?' My answer must be 'No, but because his Majesty's ministers have no confidence in them; and therefore, as they are not Ministers to suit the Parliament, a Parliament is wanted to suit the Ministers.'"

Dec. 22. 1783.

* 23 Parl. Hist. 1292. This peroration was maliciously compared to the saying of the sailor in Joe Miller, who, in a time when there was a cry that the Church was in danger, patted with his hand one of the pillars of St. Paul's, crying out, "Don't be afraid; I will stand by you."

† 24 Parl. Hist. 224–25.

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Getting upon his own ground, he argued very keenly upon the insufficiency of Lord Temple's denial that he declared the King's hostility to the India Bill by merely saying "he had not used the words imputed to him."—"Suppose that a doctor should have been suspected of having poisoned a patient with *tinctura thebaica,* and that a friend should wait upon him and acquaint him that such a suspicion, so injurious to his character, was rumoured abroad, and the doctor should say, 'My dear friend, I assure you, upon my honour, I never administered to the patient *tinctura thebaica,*' would this answer satisfy any man that the doctor was innocent? Nay, I insist it would fix upon him the strongest suspicion that he had poisoned his patient with some other drug? This is what lawyers call a *negative pregnant,* or a denial bearing an admission of the truth of the charge."—The motion was carried, and Erskine, going up with the address, was surprised to hear the King say, "I assure you I will not interrupt your meeting by any exercise of my prerogative, either of prorogation or dissolution." The Coalitionists were not yet sufficiently unpopular, and his Majesty "bided his time."*

Jan. 12. 1784. Erskine's speech on "the state of the nation."

On the day when Mr. Pitt, the new Prime Minister, resumed his seat in the House of Commons after his re-election, Mr. Fox brought forward his motion for going into a committee on "the state of the nation." Erskine, on this occasion, came down with a prepared, but not very felicitous, oration. He said: "The question was, whether this country was to be governed by men whom the House of Commons could confide in, or whether the representatives of the people were to be the sport of any junto that might hope to rule over them by an unseen and inexplicable principle of government utterly unknown to the Constitution. The total removal of all the executive servants of the Crown, while they were in full possession of the confidence of that House, and indeed without any other visible or avowed cause than their enjoyment of that confidence, and the appointment of others with no pretension except that they enjoyed it not,

* 24 Parl. Hist. 239—263.

appeared to him a most alarming and portentous attack on public freedom. If the right honourable gentleman retains his opinions, which are in direct contradiction to those repeatedly avowed by this House, he enters upon office without the most distant prospect of serving the public. He brings on a struggle between executive and legislative authority, when they were harmoniously working together for the common good. But whoever stands upon secret influence against the confidence of this House will find that his abilities, however great they may be, or may be fancied, instead of being a support and protection to him, will only be like the convulsions of a strong man in the agonies of disease, which exhaust the vital spirit faster than the languishing of debility, and bring on death the sooner. Such, in a few hours, I trust, will be the fate of the right honourable gentleman at the head of the present Government. Indeed, I never compare in my own mind his first appearance in this House, when under the banners of my right honourable friend he supported the genuine cause of liberty, with his present melancholy ridiculous situation in it, but I am drawn into an involuntary parody of the scene of Hamlet and his mother in the closet: —

> 'Look here upon this picture, and on this:
> See what a grace was seated in his youth,
> His father's fire — the soul of Pitt himself,
> A tongue like his to soften or command;
> A station like the genius of England
> New lighted on this top of Freedom's hill;
> A combination and a form indeed,
> Where every God did seem to set his seal
> To give his country earnest of a patriot.
> ——— Look you now what follows:
> Dark secret influence, like a mildew'd ear,
> Blasting his public virtue: has he eyes?
> Could he this bright assembly leave to please, —
> To batten on that bench?'

"The right honourable gentleman may profit the less by these observations, from believing that I seek them, and that I have pleasure in making them. If he thinks so, let me assure him, upon my honour, that he is mistaken — so very much mistaken, that the inconveniences which the world suffers at this moment from the want of a settled

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government are greatly heightened to my feelings from the reflection that they are caused by his misguided ambition. Our fathers were friends, and I was taught from infancy to reverence the name of Pitt. This original predilection, instead of being diminished, was greatly strengthened by a personal acquaintance with the right honourable gentleman himself — which I was cultivating with pleasure when he was taken from his profession into a different scene. Let him not think me the less his friend, or that I am the mean envier of his talents, if I suggest to him that they have been too much talked of, and that both he and his country are now reaping the bitter fruits of the intemperate praises bestowed upon them. 'It is good,' says Solomon, 'for a man to bear the yoke in his youth.' If the right honourable gentleman had attended to that maxim, he would have been contented, in a subordinate situation, to have assisted in carrying on the affairs of the nation, instead of declaring that none is fit for him but the highest, and thus for a time, at least, (the spirit of the House will take care that it is not long,) disturbing and distracting the whole range of public affairs. How very different has been the progress of my right honourable friend who sits near me! He was not hatched into a Prime Minister by the heat of his own ambition, but, *bearing the yoke in his youth*, as it was *good for him*, passed through subordinate offices, matured his talents in long Oppositions, and reached, by the natural progress of his powerful mind, a superiority of political wisdom and comprehension which all sides in this House have long, with delight and satisfaction, acknowledged." *

One successful attack on Pitt by Erskine.

In a subsequent part of the same debate (the House sitting from two o'clock in the afternoon till eight next morning), Erskine made an extempore attack on the Premier, in which, being cheered on by his friends, he succeeded much better. Pitt had declared that he took the Government on the plain and intelligible ground that he might save the country from the India Bill, and he was thus answered:

* 24 Parl. Hist. 272.

"After the inconsistencies of the day, I am not surprised to hear the right honourable gentleman assert the India Bill to be the cause of his assuming the Government; but I shall be surprised indeed if any body believes him. No man of common sense — at least no man of common memory — sitting in this House will believe him, for all have heard him a hundred and a hundred times declaim upon his determined purpose to destroy the late Government before the India Bill was thought of. He could not act with the '*Coalition*,' forsooth, — not he! because of the obnoxious principles of the noble lord in the blue ribbon — and yet he flies at the same moment into the arms of the pure and patriotic Lord Advocate, as if he had been attached to him by magnetism. I suppose it may be owing to a sort of political Methodism, which operates by faith, to the total exclusion of works, and by which the most obdurate sinner may be converted in a moment, without giving up any of the amusements of the flesh. It is, Sir, an affront to human reason to say that it was inconsistent for the right honourable gentleman to act in concert with the noble lord in the blue ribbon — while he is content to sit in the Cabinet with Lord Gower, the uniform supporter of that noble lord, and with Lord Thurlow, who, if not the instigator, was the zealous defender of the worst errors of the Administration by which America was lost to us — though, perhaps, the right honourable gentleman may say he has accommodated matters with these two noble lords, that, sinking other differences, he may have their sure co-operation in his grand plan of parliamentary reform, on which he still declares that he rests his own reputation, and which he still maintains to be necessary for the salvation of the state! [much laughter.] I should, indeed, admire the rigidity of that man's muscles who can withstand the childish impertinent inconsistencies in these political partialities and aversions — although melancholy is the reflection, that to such pretences the interests of this miserable devoted country are to be sacrificed." *

* 24 Parl. Hist. 313.

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Jan. 23. 1784. His fallacious prophecies about Pitt's India Bill.

When Mr. Pitt's India Bill was introduced, under which our Eastern possessions have been so long and auspiciously governed, Erskine described it as "such a monstrous production as never did, and he trusted never would, disfigure the Statute Book of this realm;"—as "a mere piece of patch-work, which could only disgrace the contriver," adding, "that it would deluge this country with profligacy and venality of every kind, that it would ruin the East India Company, and that it would lead to the oppression and misery of the inhabitants of Indostan, till they would rise and shake off our yoke." He then contrasted it with the rejected India Bill, the merits of which he once more detailed at great length to the House.*

Feb. 16. 1784.

On a subsequent day he justified the Resolution of the Commons, which had been censured by the House of Lords—directing the Lords of the Treasury not to make certain payments out of the public revenue. He contended that it was only declaratory of the law, and did not try to make a new law as the Lords pretended. "What have been the pitiful tricks," he asked, "employed to support a set of Ministers who have defied the jurisdiction of this House? They have tried to delude the public mind, and to obtain addresses in their favour by stratagem and imposture. The prejudices against the measures of the late Government, and against his right honourable friend, originated in misrepresentation and falsehood." †

Feb. 18. 1784. His motion to stop the supplies.

Erskine's last speech in the House of Commons, till seven years had rolled away, was on the motion for stopping the supplies, in consequence of the King's refusal to dismiss his Ministers in pursuance of the address of the House of Commons, praying him to do so. In answer to the objection that Ministers should have been tried before they were condemned, he justified the resolutions of the House against them, from the famous work of Lord Somers, written in answer to the declaration of King Charles II. to the people of England, on the dissolution of Parliament in 1681,—reading several passages, which made the distinction between impeachments to

* 24 Parl. Hist. 402. † Ib. 563.

punish, and addresses and resolutions to *remove* Ministers—the first requiring accusation and trial—the last resting on opinion, which may depend upon matters palpable and certain, though beyond the reach of legal proof, and which may be reasonably destructive of all confidence, though not a foundation for punishment.*

March 25. 1784. Dissolution. Erskine loses his seat in Parliament.

The motion was carried, and soon after Parliament was dissolved, the public being highly disgusted with the coalitionists, and indignant at the factious attempts which had been made to subvert Mr. Pitt's Government,—so that he could now with confidence appeal to the constituencies. Erskine, sharing the fate of a vast many of his Whig friends, lost his seat for Portsmouth, and could not gain admission into the new Parliament. If he had been able justly to estimate his own powers, he must have felt little regret; for he had clearly proved to the world that the *forum*, not the *senate*, was the proper field for their display.

May, 1783. His silk gown.

Notwithstanding these political checks and mortifications, his professional career went on with increasing brilliancy. During the Coalition Ministry, while the Great Seal was in commission, he had obtained a patent of precedence, which entitled him to wear a silk gown and sit within the bar. Lord Loughborough, the first Lord Commissioner, was most active in conferring this dignity upon him, but the step was said to have been suggested by Lord Mansfield, in consideration of his great eminence in the Court of King's Bench; and although he had not yet been five years at the bar, the whole profession concurred in the propriety of it. He had refused to hold junior briefs, and while he wore a stuff gown, taking rank only from his standing at the Bar, a number of venerable juniors, who at the age of fifty or sixty still wore the same garb, were thrown out of business, as they could not be retained with him in the same cause. His consequence depended, less than that of any other man who has ever been in the profession, on the place from which he spoke, or the robe which he wore,—but he was pleased with his promotion; for a silk gown, from its rarity, was then a

* 24 Parl. Hist. 615.

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great distinction, and even *he* was sensible that his weight, on common occasions, both with Judges and jurymen, was enhanced by belonging to the chosen few who enjoyed the highest rank at the bar.*

Special retainers.

Now began his special retainers, by which he was taken to the assizes in all parts of England and Wales, with a fee of at least 300 guineas.† The first of these was in the case of the Dean of St. Asaph.

Sept. 1783. The Dean of St. Asaph's case; arising out of Sir W. Jones's pamphlet.

The famous Sir William Jones, the most accomplished man of his age, had written a very harmless little tract illustrating the general principles of government, and recommending parliamentary reform, entitled "A Dialogue between a Gentleman and a Farmer." His brother-in-law, Dr. Shipley, approving of it, recommended it to a society of reformers in Wales, and caused it to be reprinted. Thereupon, the Honourable Mr. Fitzmaurice, brother to the first Marquis of Lansdowne, preferred an indictment against the Dean at the Great Sessions for Denbighshire, for a seditious libel, and in the autumn of 1783 it stood for trial at Wrexham, before Lord Kenyon, then Chief Justice of Chester, and his brother judge, Mr. Justice Barrington. Erskine attended, and thousands flocked to this dirty Welsh village in the hope

* There was a great difficulty in settling the precedence of those now promoted. It was wished to give the *pas* to Erskine, who was by far the most distinguished, but was the junior in standing at the Bar. Pigot, afterwards Attorney General, yielded his claim. It has been said, "He was probably despised by Erskine for this voluntarily humiliation, and to a feeling of contempt may be ascribed that bitterness against the pusillanimous senior which excited general surprise."[1] The Right Hon. T. Erskine writes to me, — "I cannot believe that this charge of bitterness against Pigot had any other foundation than some misconstrued ebullitions of professional zeal. I have often heard my father speak of Pigot in terms of admiration and regard; and it is to me inconceivable that a man so overflowing with generous kindness should have selected as the single object of personal rancour one whose only offence was the tender of the highest compliment that one competitor in a professional struggle can pay to his rival. The imputation is disproved by the whole current of his life, and obvious character of his disposition."

† According to the etiquette of our profession, no barrister may go to plead a cause on a different circuit from that which he usually attends, except on a special retainer; and, if he wears a silk gown, he cannot take a fee less than 300 guineas. This is to prevent the unseemly scramble for business which might otherwise take place. Some say that special retainers began with Erskine; but I doubt the fact. From this time till he left the bar he had, upon an average, twelve special retainers a year.

[1] Townsend's Lives of Eminent Judges, vol. i. 423.

of hearing him. There was a general feeling in favour of the defendant, so that his acquittal was anticipated, for not only had the pamphlet been generally read and approved of, but it was well known that the Attorney and Solicitor General, being applied to, had refused on the part of the Government to prosecute the author. At the sitting of the Court, however, a motion was made by the prosecutor's counsel to postpone the trial, on the ground that a paper had been printed and extensively circulated in the neighbourhood, which, without mentioning or alluding to the pending prosecution, argued that in all cases of libel the jury are judges of the law as well as of the fact, and contained various extracts from legal writers to establish this position. There was no allegation that this was done by the defendant, and he made an affidavit, positively denying all knowledge of it. Notwithstanding an animated address from Erskine upon the unreasonableness of the motion and the extreme hardship which delay would cause to his client, the Judges without hearing the reply, ordered the trial to be postponed, and upon a suggestion by Erskine that a letter of the prosecutor could be proved, showing that he was acting vindictively, the following speech is said to have been made by the presiding judge: *Lord Chief Justice Kenyon.* — "*Modus in rebus* — there must be an end of things."*

Postponement of the trial.

The case again stood for trial before the same tribunal in the spring of 1784, and Erskine again repaired to Wrexham; but this time he had not the opportunity of even making a complaint, for, alighting from his post-chaise, he found that by a writ of *certiorari* served the same day, the indictment

Certiorari.

* 21 State Trials, 875. There were several Latin quotations which this distinguished lawyer had picked up, and which he generally misapplied,—insomuch that George III. gave him the friendly advice, — "Stick to your *good law*, and leave off your *bad Latin*." He was very acute, very deeply learned in his profession, and a very honest man; but it was rather humiliating that the successor of such an accomplished scholar as Lord Mansfield should hardly have had the rudiments of a classical education. The salutary regulation of the Inner Temple, requiring a previous examination in classics before being admitted a student of law, cannot be complained of as aristocratic, or tending to exclude men of humble origin from our profession. Had it existed in Kenyon's time, it would only have induced him, by labour and perseverance, to have learned to construe Homer and Virgil, — which would have made him a happier man, and a still better Chief Justice.

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was removed from the Great Sessions in Wales into the Court of King's Bench.

Aug. 6. 1784. Trial at Shrewsbury.

The trial actually did come on at the following Summer Assizes for Salop, the next adjoining English county, before Mr. Justice Buller — when a scene was acted ever memorable in our juridical annals. Bearcroft, leading counsel for the prosecution, although he expressed his own opinion that the Dialogue was a libel, aware that no twelve Englishmen would find it to be so, boldly affirmed that this was no question for the jury, and that they were bound to convict the defendant if they believed that he caused it to be published, and that it was "of and concerning the King and his Government," — leaving him to move the Court in arrest of judgment, or to bring a writ of error if he was advised that its sentiments and language were innocent.

Erskine's speech to the jury.

"The only difficulty which I feel," said Erskine, "in resisting so false and malevolent an accusation, is to be able to repress the feeling excited by its folly and injustice within those bounds which may leave my faculties in their natural and unclouded operation; for I solemnly declare to you, that if he had been indicted as a libeller of our holy religion, only for publishing that the world was made by its Almighty author, my astonishment could not have been greater than it is at this moment, to see the little book which I hold in my hand presented by a Grand Jury of English subjects as a libel upon the Government of England. Every sentiment contained in it (if the interpretation of words is to be settled, not according to fancy, but by the common rules of language) is to be found in the brightest pages of English literature, and in the most sacred volume of English laws: if any one sentence, from the beginning to the end of it, be seditious or libellous, the Bill of Rights was a seditious libel; the Revolution was a wicked rebellion; the existing Government is a traitorous conspiracy against the hereditary monarchy of England; and our gracious Sovereign, whose title I am persuaded we are all of us prepared to defend with our blood, is an usurper of the Crown he wears. That all these absurd, preposterous, and treasonable conclusions follow neces-

sarily and unavoidably from a conclusion that this Dialogue is a libel,— copying the example of my learned friend who has pledged *his* personal veracity in support of his sentiments,— I assert, upon *my* honour, to be my unaltered, I may say my unalterable opinion, formed upon the most mature deliberation; and I choose to place that opinion in the very front of my address to you, that you may not, in the course of it, mistake the energies of truth for the zeal of professional duty. This declaration of my own sentiments, even if my friend had not set me the example by giving you his, I should have considered to be my duty on this occasion; for although, in ordinary cases, where the private right of the party accused is alone in discussion, and no general consequences can follow from the decision, the advocate and the private man ought in sound discretion to be kept asunder; yet there are occasions when such separation would be treachery and meanness. In a case where the dearest rights of society are involved in the resistance of a prosecution, — where the party accused is, as in this instance, a mere name, — where the whole community is wounded through his sides, — and where the conviction of the private individual is the subversion or surrender of public privileges, — the advocate has a more extensive charge, — the duty of the patriot citizen then mixes itself with his obligation to his client,— and he disgraces himself, dishonours his profession, and betrays his country, if he does not step forth in his personal character, and vindicate the rights of all his fellow-citizens, which are attacked through the medium of the man he is defending. Gentlemen, I do not mean to shrink from that responsibility upon this occasion; I desire to be considered the fellow-criminal of the defendant — if by your verdict he should be found one — by publishing in advised speaking (which is substantially equal in guilt to the publication that he is accused of before you) my hearty approbation of every sentiment contained in this little book, promising here in the face of the world to publish them upon every suitable occasion, amongst that part of the community within the reach of my precept, influence, and example. If there be any more prosecutors like the present abroad amongst

us, they know how to take advantage of these declarations." Then, well knowing Buller's opinion respecting the rights of jurors to consider the question of *libel or no libel*, and the direction that would certainly be given by him in this case,—with admirable calmness and tact he thus proceeds:—"Gentlemen,—when I reflect upon the danger which has often attended the liberty of the press in former times, from the arbitrary proceedings of abject, unprincipled, and dependent Judges, raised to their situations without ability or worth, in proportion to their servility to power, I cannot help congratulating the public that you are to try this indictment with the assistance of the learned Judge before you,—much too instructed in the laws of this land to mislead you by mistake, and too conscientious to misinstruct you by design. The days, indeed, I hope are now past, when Judges and jurymen upon state trials were constantly pulling in different directions,—the Court endeavouring to annihilate altogether the province of the jury, and the jury in return listening with disgust, jealousy, and alienation, to the directions of the Court. Questions of libel may now be expected to be tried with that harmony which is the beauty of our legal constitution,—the jury preserving their independence in judging of the intention, which is the essence of every crime,—but listening to the opinion of the Judge upon the evidence, and upon the law, with that respect and attention which dignity, learning, and honest intention in a magistrate must and ought always to carry along with them. Having received my earliest information in my profession from the learned Judge himself, and having daily occasion to observe his able administration of justice, you may believe that I anticipate nothing from the Bench unfavourable to innocence; and I have experienced his regard in too many instances not to be sure of every indulgence that is personal to myself. These considerations enable me with more freedom to make my address to you upon the merits of this prosecution, in the issue of which your own general rights, as members of a free state, are not less involved than the private rights of the individual I am defending."

So, without laying himself open to any interruption from the Judge, whom he appeared to treat with great courtesy and respect, he assumed that the jury were to determine upon the true character of the paper charged as libellous. Having then pointed out the extreme hardship his client had suffered in the trial being twice postponed, and at last brought on at such a distance from his home,—he came to the "DIALOGUE;" and, taking it sentence by sentence,—in a speech of several hours, which never flagged for an instant, he showed that most Englishmen would concur in its doctrines—which were the foundation for the Bill to reform the representation of the people several times brought forward by the present Prime Minister, and that, at all events, it stated nothing which in a free country might not be lawfully brought forward for consideration and debate. Finding that he had the jury "breast high" with him, he returned to the subject of their power to deal with the question of *libel or no libel*, which he asserted in still bolder language—and thus he took leave of them:—"Let me therefore conclude with reminding you, gentlemen, that if you find the defendant GUILTY, not believing the thing published to be a libel, or the intention of the publisher seditious,—your verdict and your opinion will be at variance, and it will then be between God and your own consciences to reconcile the contradiction."

Mr. Justice Buller's charge to the jury.

Mr. Justice Buller, however, began his summing up by telling the jury that, there being no doubt as to the *innuendoes*, the only question they had to decide was, "whether the defendant was or was not proved to have published the pamphlet?" He overruled all that had been contended for on this subject by the defendant's counsel, saying, "How this doctrine ever comes to be now seriously contended for is a matter of some astonishment to me, for I do not know any one question in the law which is more thoroughly established:"—and after a great many similar observations, he thus concluded: "Therefore, I can only say, that if you are satisfied that the defendant did publish this pamphlet, and are satisfied as to the truth of the innuendoes, you ought in point of law to find him guilty."

CHAP. CLXXVIII.

A.D. 1784.

Scene on the delivery of the verdict, when Buller threatened to commit Erskine, and Erskine defied him.

The jury withdrew, and in about half an hour returned into Court. When their names had been called over, the following scene was enacted. — *Clerk.* "Gentlemen of the jury, do you find the defendant guilty or not guilty?"—*Foreman.* "Guilty of publishing only." — *Erskine.* "You find him guilty of publishing only?"—*A Juror.* "Guilty only of publishing." — *Buller, J.* "I believe that is a verdict not quite correct. You must explain that one way or the other. The indictment has stated that *G.* means 'Gentleman,' *F.* 'Farmer,' *the King* 'the King of Great Britain,' and *the Parliament* 'the Parliament of Great Britain.'" — *Juror.* "We have no doubt about that."—*Buller, J.* "If you find him guilty of publishing, you must not say the word 'only.'" —*Erskine.* "By that they mean to find there was no sedition."—*Juror.* "We only find him guilty of publishing. We do not find any thing else."—*Erskine.* "I beg your Lordship's pardon; with great submission, I am sure I mean nothing that is irregular. I understand they say 'We only find him guilty of publishing.'" — *Juror.* "Certainly, that is all we do find."—*Buller, J.* "If you only attend to what is said, there is no question or doubt." — *Erskine.* "Gentlemen, I desire to know whether you mean the word '*only*' to stand in your verdict."—*Jurymen.* "Certainly."—*Buller, J.* "Gentlemen, if you add the word '*only*' it will be negativing the innuendoes." — *Erskine.* "I desire your Lordship sitting here as Judge to record the verdict as given by the Jury."—*Buller, J.* "You say he is guilty of publishing the pamphlet, and that the meaning of the innuendoes is as stated in the indictment."—*Juror.* "Certainly."—*Erskine.* "Is the word 'only' to stand part of the verdict?"—*Juror.* "Certainly." — *Erskine.* "Then, I insist it shall be recorded."—*Buller, J.* "Then the verdict must be misunderstood; let me understand the Jury."—*Erskine.* "The Jury do understand their verdict." — *Buller, J.* "Sir, I will not be interrupted."—*Erskine.* "I stand here as an advocate for a brother citizen, and I desire that the word *only* may be recorded." — *Buller, J.* "SIT DOWN, SIR; REMEMBER YOUR DUTY, OR I SHALL BE OBLIGED TO PROCEED IN ANOTHER

MANNER."—*Erskine.* "YOUR LORDSHIP MAY PROCEED IN WHAT MANNER YOU THINK FIT; I KNOW MY DUTY AS WELL AS YOUR LORDSHIP KNOWS YOURS. I SHALL NOT ALTER MY CONDUCT."

The learned Judge took no notice of this reply, and, quailing under the rebuke of his pupil, did not repeat the menace of commitment. This noble stand for the independence of the bar would of itself have entitled Erskine to the statue which the profession affectionately erected to his memory in Lincoln's Inn Hall. We are to admire the decency and propriety of his demeanour during the struggle, no less than its spirit and the felicitous precision with which he meted out the requisite and justifiable portion of defiance. The example has had a salutary effect in illustrating and establishing the relative duties of Judge and Advocate in England.

The jury, confounded by the altercation, expressed a wish to withdraw, and the verdict was finally entered, "Guilty of publishing, but whether a libel or not we do not find."

Erskine's speech in the Court of King's Bench, moving for a new trial.

In the ensuing Michaelmas Term a rule was obtained to show cause why the verdict should not be set aside, and a new trial granted, on the ground of misdirection by the Judge.* Erskine's addresses to the Court in moving, and afterwards in supporting his rule, display beyond all comparison the most perfect union of argument and eloquence ever exhibited in Westminster Hall. He laid down five propositions most logically framed and connected — which, if true, completely established his case — and he supported

* In a copy of the trial, which had formerly belonged to Lord Erskine himself, I find in his own handwriting, after the verdict at Shrewsbury, the following memorandum: —"In Michaelmas T., which immediately followed, I moved the Court of King's Bench for a new trial, for a misdirection of the Judge, and misconduct after the verdict was returned into Court. I made the motion from no hope of success, but from a fixed resolution to expose to public contempt the doctrines fastened on the public as law by Lord Chief Justice Mansfield, and to excite, if possible, the attention of Parliament to so great an object of national freedom." There then follows an observation which I do not understand. "The latter object miscarried from a circumstance which will hereafter be a curious piece of history, and show upon what small and strange pivots the greatest national events turn and depend." I presume that this had been written before Mr. Fox introduced his Libel Bill, which was not till 1791; and that a reference is made to some unknown circumstance which had delayed, and was thought to have defeated, that measure.

them with a depth of learning which would have done honour to Selden or Hale, while he was animated by an enthusiasm which was peculiarly his own. Though appealing to Judges who heard him with aversion or indifference, he was as spirited as if the decision had depended on a favourable jury, whose feelings were entirely under his control. So thoroughly had he mastered the subject, and so clear did he make it, that he captivated alike old black-letter lawyers and statesmen of taste and refinement. Charles Fox was not present in Court, and could not have been carried away by the exciting manner of the advocate; yet having read the second speech delivered in moving to make the rule absolute, he often declared it to be the finest piece of reasoning in the English language. But it made no impression on the Judges. Erskine himself, in his defence of Paine some years afterwards, gives rather a striking description of the manner in which they received it: "I ventured to maintain this very right of a jury over the question of libel under the same ancient constitution, before a noble and reverend magistrate of the most exalted understanding, and of the most uncorrupted integrity. He treated me, not with contempt indeed, for of that his nature was incapable — but he put me aside with indulgence, as you do a child when it is lisping its prattle out of season." Of the closely-knit arguments and beautiful illustrations which constituted this speech, it would be impossible by extracts to convey an idea.

Lord Mansfield, in giving judgment, relied upon the practice that had long prevailed, and mainly upon the words of a ballad made on the acquittal of the "CRAFTSMAN" prosecuted by Sir Philip Yorke — which he misquoted — saying: —

> "Sir Philip well knows
> That his innuendoes
> Will serve him no longer
> In verse or in prose;
> For twelve honest men have decided the cause,
> *Who are judges of fact, though not judges of laws.*"

Whereas the true rendering of the last line is —

> "*Who are judges alike of the facts and the laws.*"

Arrest of judgment.

Erskine then moved in arrest of judgment, saying, that "all who knew him, in and out of the profession, could witness for him, that he had ever treated the idea of ultimately prevailing against the defendant upon such an indictment to be perfectly ridiculous, and that his only object, in all the trouble he had given to their Lordships and to himself, in discussing the right to a new trial, was to resist a precedent which he originally thought, and still continued to think, was illegal and unjustifiable: the warfare was safe for his client, because he knew he could put an end to the prosecution any hour he pleased, by the objection he would now, at last, submit to the Court." He was contending that the "Dialogue" was an entirely innocent production, when the counsel for the prosecution were required to point out any part of it, as charged in the indictment, which could be considered criminal, and they being unable to do so, JUDGMENT WAS ARRESTED.

Consequences of Erskine's noble conduct.

So ended this famous prosecution. It seemed to establish for ever the fatal doctrine, that *libel or no libel* was a pure question of law, for the exclusive determination of Judges appointed by the Crown. But it led to the subversion of that doctrine, and the establishment of the liberty of the press, under the guardianship of English juries. The public mind was so alarmed by the consequences of this decision, that Mr. Fox's libel bill was called for, which *declared* the rights of jurors in cases of libel; and I rejoice always to think that it passed as a *declaratory* act, although all the Judges unanimously gave an opinion, in the House of Lords, that it was inconsistent with the common law. I have said, and I still think, that this great constitutional triumph is mainly to be ascribed to Lord Camden, who had been fighting in the cause for half a century, and uttered his last words in the House of Lords in its support: but without the invaluable assistance of Erskine, as counsel for the Dean of St. Asaph, the Star Chamber might have been re-established in this country.*

* 21 St. Tr. 847—1045. Erskine's Speeches, vol. i. 137—393.

CHAPTER CLXXIX.

CONTINUATION OF THE LIFE OF LORD ERSKINE TILL THE COMMENCEMENT OF THE STATE TRIALS, IN 1794.

CHAP. CLXXIX.

May, 1784. Erskine counsel at the bar of the House of Commons in the Westminster scrutiny.

WHILE out of Parliament, Erskine several times appeared as counsel at the bar of the House of Commons, using very considerable freedoms with this august assembly. Being retained upon the petition respecting the "Westminster Scrutiny," in cross-examining a witness who had imputed misconduct to Mr. Fox's agents, he put the question, "Why do you infer that they were Mr. Fox's agents?" and the witness replying, "Because they appeared to be his friends," he exclaimed, "If all Mr. Fox's friends are to be taken to be his agents, every honest man may be so esteemed who is not a member of this house." The counsel was ordered to withdraw, and the Speaker was severely blamed for allowing such language to pass unnoticed. Cornwall apologised— admitting what had been said at the bar to be highly irregular, and a vote of censure on the counsel was then moved. Erskine, who was within hearing, was turning in his mind the spirited speech he should make in answer, when he was deeply mortified by hearing Pitt say, in a most supercilious tone, "I rather think, Sir, it is not worth our while to take any further notice of the language of the learned gentleman, as it probably formed part of his instructions"!!!

July, 1784. His disrespectful language to the House of Commons, and Pitt's contemptuous treatment of him.

Appearing to support a petition against certain clauses of the new bill for regulating the affairs of the East India Company, he denounced the whole measure as a vile imposture practised on a credulous nation, eulogising in the warmest terms the rejected bill of his right honourable friend. An admonition to regularity, at last coming from the chair, he said, "If, Mr. Speaker, I have been guilty of any irregularity, it arises solely from a diminution of that respect which I was accustomed to feel for this assembly before it was shorn

of its dignity — but which no longer animates me." He then, in an ironical and taunting tone, observed upon the humility of his present situation, standing at the bar of that House of which he had formerly been a member, and on the respect due to an assembly which was supposed to be so pure, so elevated, and so wise. At last he tried to restore good humour by a bad joke — saying, "I am well aware, Sir, that addresses from counsel are never much relished by the members of this House, and are rather submitted to by way of *physic*, as it were, for the benefit of the *constitution*. I promise, therefore, to make my dose as palatable as the nature of the patient's case will admit." This the House would not swallow, and the Speaker again interrupted him, desiring him to confine himself to the prayer of the petition. *Erskine.* — "At this late hour, Sir, the House ought not to enter upon the consideration of so important a subject." *Speaker.* "Sir, it does not become counsel at the bar to intimate when this House ought to adjourn. The House will govern its own proceedings as it thinks proper, and unless you wish to make some farther observations for your client, you may withdraw." He continued his speech, but with little effect, as the feeling on both sides was against him, and he required, as a stimulus to his oratory, the sympathy of his audience.

His ascendency at the bar.

But although he could never very successfully adapt himself to the trim of the House of Commons, such rebuffs were soon forgotten amidst his triumphs in the adjoining hall. Bearcroft, Pigot, and the other king's counsel opposed to him, were completely overmatched by him; he had great influence with judges as well as jurymen, and the saying went, that "in the Court of King's Bench he was like a bull in a china shop." * He now gave up his circuit entirely, and confined himself to special retainers — being the first English barrister who ever took so bold a step.

Although excluded from parliament, he kept up a strict

* It might have been said of him, as it afterwards was of Scarlett, that "he had invented a machine by the secret use of which in Court he could always make the head of a Judge nod assent to his propositions; whereas his rivals, who tried to pirate it, always made the head of the Judge move dissentingly from side to side."

CHAP. CLXXIX.

A.D. 1786.

His connection with the opposition leaders.

political connexion with the opposition leaders, and was particularly intimate with Fox and Sheridan. He had a great admiration of Burke, whose writings he perused almost as much as those of Milton and Shakspeare. But the feeling was not reciprocal. Burke disliked all lawyers, and considering the new ally of the party rather shallow and ill-informed, is said to have envied the fame and fortune he was acquiring. But Erskine was a very great favourite with the Prince of Wales, who was at this time a zealous Whig, and, forming his establishment as heir apparent, made him his Attorney General — intimating, that if of longer standing at the bar, he should have been appointed Chancellor of the Duchy of Cornwall — but that this office should be kept vacant for him.

He is appointed Attorney General to the Prince of Wales.

His speech on the prosecution of Rex v. Motherill. March, 1786.

I mention the next case, in which he particularly attracted the attention of the public, chiefly for the purpose of showing the defective state of the administration of the criminal law which still prevailed. A gentleman of the name of Motherill, who certainly was of bad moral character as well as of deformed person, but who, like all the King's subjects, was entitled to a fair trial, stood capitally charged for an assault upon Miss Wade, a young lady between sixteen and seventeen years of age, the daughter of an officer in the army, then Master of the Ceremonies at Brighton. Erskine was brought special to the Sussex assizes, and, although there was a strong prejudice against the prisoner, and no speech from counsel could be heard for him, thus addressed the jury without being checked by the Judge, and, I presume, without being supposed to outstep the line of his duty, — the inflammatory language of the harangue being rendered more objectionable by its affected candour: — "I beseech you, gentlemen, to discharge from your minds every thing you have heard of the prisoner, and I might add, too, every thing you have seen; for I am told *this wicked and unfortunate wretch* has been this morning led about the streets for the benefit of air, and may probably have excited your compassion. I have no objection that you should compassionate him; a man is more an object of compassion because he is an

object of justice, — because his crimes are objects of horror." After exciting the sympathies of the jury for the afflicted father — praising his gallantry when in the service to which he had himself belonged, — he introduces the daughter with an affecting picture of her beauty and purity — preparing the jury for some inconsistencies in her evidence by insinuating that she was rather weak in her understanding. He then continues: "When she is attentively observed by you, you will probably make this remark, that I confess I made myself upon seeing her, that if you could conceive a painter of the finest genius to be desirous of representing the character of artless simplicity and innocence, he would fix upon the countenance and figure of Miss Wade. — (What a venial offence is even murder compared with that of which the prisoner is accused!) — It seems at first view, and it has often struck me as a very great hardship, that the prisoner's counsel cannot make those observations which, in the commonest civil law action, every man's counsel is enabled to make for him; but the law is much wiser than me or any other individual. Custom comes to the protection of the prisoner, and imposes as a duty upon those who prosecute that, which, perhaps, the law does not enforce, viz. that with whatever strength, with whatever clearness, with whatever conclusion the evidence on the part of the prosecution shall appear to-day, and whatever art and ingenuity may be employed to defeat the ends of justice, I shall, I can, make no reply. If I should see the strength of my evidence as clear as the sun at noontide, and if I should see the weakness of any observations on the effect of any cross-examination of this young lady, so that I might drag him to justice by the power of your enlightened understanding, I shall be silent as the grave." — After a highly-coloured sketch of the facts, he thus concludes: — "If there is any probability in favour of the prisoner at the bar, in God's name let him have it. But there is no probability in his favour, none that any reasonable mind can for a moment entertain; for, let me ask you this question, whether it be consistent with any thing you

ever saw, heard, or read of, that a young lady of hitherto chaste and virtuous life, artless, simple, and innocent in her manners, should all of a sudden go out on a tempestuous night — leave her father's house, not to throw herself into the arms of a lover, who had addressed her and endeavoured to seduce her, but into the arms of a stranger, with nothing to recommend him, with nothing upon earth to captivate or seduce the fancy? It is repugnant to reason to believe it — it is a thing incredible, that the most viciously disposed woman could go into the arms of the squalid wretch before you! I do not mean to insult him by the expression; his wickedness renders him an object of compassion. But if he is not to be insulted, a virtuous, innocent, miserable, ruined lady is not to pass unredressed; nor the breach of God's laws and the country's to pass unrevenged. If he dies, he suffers less than her who lives. Oh fie! It is a solemn and an unpleasant duty you have to perform. You are humane, I have no doubt, and I am glad you are so. Those who are not humane cannot be just. Justice is all I ask at your hands. If in your consciences you believe that the prisoner at the bar did commit this offence, so shocking to the individual and repugnant to all the principles of justice, you are bound in duty to God and to your country to convict him. If you can go home to-night, and satisfy yourselves that this young lady either has not been violated in point of fact, or that, having been so, it has been with her own consent; if you can persuade yourselves of that absurd and improbable proposition, after you shall have heard the evidence, I shall not call your mercy in question; it is a matter which will rest with your own consciences."

Although circumstances appeared, which induced the jury very reluctantly to pronounce a verdict of NOT GUILTY, it is impossible to say that they could be in a fit state of mind to discharge their duty after listening to this appeal to their passions. Soon after, by a well-understood rule in the profession, a counsel for the Crown on a charge of felony was confined to a dry statement of the facts, with a view to enable the jury to understand the evidence; and now, thank God!

the Prisoner's Counsel Bill has entirely removed the stain which so long deformed our criminal procedure.

A.D. 1788. Retirement of Lord Mansfield.

Several years rolled on prosperously in the common routine of the profession, without producing any other celebrated cause or any political event to affect the fortunes of Erskine. In Trinity Term, 1788, the increasing infirmities of Lord Mansfield induced him to retire from his office after having presided with distinguished lustre as head of the Common Law for upwards of thirty-two years. On this occasion Erskine, as the organ of the counsel practising in his Court, wrote and presented to him the following address:—

"*To the Earl of Mansfield.*

"MY LORD,

Address of the bar to him, delivered by Erskine.

"It was our wish to have waited personally upon your Lordship in a body, to have taken our public leave of you, on your retiring from the office of Chief Justice of England; but judging of your Lordship's feelings upon such an occasion by our own, and considering, besides, that our numbers might be inconvenient, we desire, in this manner, affectionately to assure your Lordship, that we regret, with a just sensibility, the loss of a magistrate whose conspicuous and exalted talents conferred dignity upon the profession, whose enlightened and regular administration of justice made its duties less difficult and laborious, and whose manners rendered them pleasant and respectable.

"But, while we lament our loss, we remember with peculiar satisfaction, that your Lordship is not cut off from us by the sudden stroke of painful distemper, or the more distressing ebb of those extraordinary faculties which have so long distinguished you among men; but that it has pleased God to allow to the evening of a useful and illustrious life the purest enjoyments which Nature has ever allotted to it—the unclouded reflections of a superior and unfading mind over its varied events, and the happy consciousness that it has been faithfully and eminently devoted to the highest duties of human society, in the most distinguished nation upon earth.

"May the season of this high satisfaction bear its proportion to the lengthened days of your activity and strength!"

To this address Lord Mansfield immediately returned the following answer:—

CHAP. CLXXIX.

A. D. 1788.

Lord Mansfield's answer.

"*To the Honourable T. Erskine, Serjeants' Inn.*

"Dear Sir,

"I cannot but be extremely flattered by the letter which I this moment have the honour to receive.

"If I have given satisfaction, it is owing to the learning and candour of the Bar: the liberality and integrity of their practice freed the judicial investigation of truth and justice from difficulties. The memory of the assistance I have received from them, and the deep impression which the extraordinary mark they have now given me of their approbation and affection has made upon my mind, will be a source of perpetual consolation in my decline of life, under the pressure of bodily infirmities, which made it my duty to retire.

"I am, dear sir,

"With gratitude to you and the other gentlemen,

"Your most affectionate

"And obliged humble servant,

"Mansfield.

"Caen Wood, June 18. 1788."

Erskine a favourite with Lord Kenyon.

It was thought that this change might be prejudicial to the ascendency of Erskine, but he was, if possible, a greater favourite with the new Chief Justice Lord Kenyon than he had been with Lord Mansfield, and he always continued to have "the ear of the Court,"—a great felicity for an advocate when it is not obtained by servility.

Not being in the House of Commons during the King's illness, which occurred in the following autumn, he was debarred from taking any part in the debates, and I do not find him much engaged in the intrigues about the Regency, although he strongly concurred in the doctrine, that during the incapacity of the reigning sovereign from mental alienation, the heir apparent was entitled, *de jure*, to take upon himself the exercise of the prerogatives of the Crown. It was settled that he should be Attorney General to the new Ministry, but I do not believe that the Prince much consulted him about the course to be adopted—being entirely under the more experienced guidance of Lord Loughborough.

The Attorney General-elect felt a good deal cast down when the prospects of himself and his party were so completely blasted by the King's recovery in the beginning of

1789, but his spirits soon rallied, and before that year expired he acquired glory much more to be envied than the power or the pelf belonging to the highest offices in the state. As counsel for Stockdale he made the finest speech ever delivered at the English Bar, and he won a verdict which for ever established the freedom of the press in England.

Prosecution by the House of Commons against Stockdale.

Pending the impeachment of Mr. Hastings, after the articles against him, drawn up by Mr. Burke in very inflamed language, had appeared in every newspaper, together with the vituperative speeches of the eloquent managers at the bar of the House of Lords, Mr. Logan, a minister of the Church of Scotland, wrote a pamphlet in his defence, which certainly contained some rather free and offensive observations upon the prosecution. The charges against Mr. Hastings were said to "originate from misrepresentation and falsehood:" the House of Commons, in making one of those charges, was compared to "a tribunal of inquisition rather than a court of Parliament:" others of them were stigmatised as "so insignificant in themselves, or founded on such gross misrepresentations, that they would not affect an obscure individual, much less a public character:" and, after a good deal of invective and sarcasm, the impeachment was said to be "carried on from motives of personal animosity, not from regard to public justice." But the author entered into the merits of the case very deliberately and very powerfully, and seemed animated by a sincere desire to show the innocence of the accused. This pamphlet was published by Mr. Stockdale, a respectable bookseller in Piccadilly, in the way of his trade. Mr. Fox, instigated by Burke, complained of it in his place as a libel upon the managers and upon the whole House of Commons, and an address was carried, praying the King to direct his Attorney General to prosecute the publisher. Accordingly, a criminal information was filed by Sir Archibald Macdonald, the then Attorney General, against Mr. Stockdale, and it came on to be tried before Lord Kenyon and a special jury in the court of King's Bench at Westminster.

Dec. 9. 1789. Erskine's

Justly to appreciate Erskine's inimitable speech upon this occasion, the whole must be perused over and over again,—

CHAP. CLXXIX.

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great speech for free discussion.

when an admirable chain of reasoning will be found to run through it, — principles will be seen clearly enunciated, illustrated, and established,— and the facts of the case will demonstrably appear to be brought within the scope of these principles, so as to entitle the defendant to an acquittal— the reader all along admiring the exquisite fancy with which the sentiments are embellished, and the harmonious and touching language in which they are conveyed. "It is justly regarded by all English lawyers as a consummate specimen of the art of addressing a jury — as a standard, a sort of precedent for treating cases of libel."* But a few extracts, which may be introduced into a biographical memoir, will give a notion, although an inadequate one, of its exquisite merit. To excite a little compassion for Mr. Hastings, and to prepare the minds of the jury favourably to consider a publication written in his defence — in which some intemperance of language might be expected — he gives the following picturesque description of the trial in Westminster Hall: — "There the most august and striking spectacle was daily exhibited which the world ever witnessed. A vast stage of justice was erected, awful from its high authority, splendid from its illustrious dignity, venerable from the learning and wisdom of its judges, captivating and affecting from the mighty concourse of all ranks and conditions which daily flocked into it as into a theatre of pleasure. Here, when the whole public mind was at once awed and softened to the impression of every human affection, there appeared day after day, one after another, men of the most powerful and exalted talents, eclipsing by their accusing eloquence the most boasted harangues of antiquity; rousing the pride of national resentment by the boldest invectives against broken faith and violated treaties, and shaking the bosom with alternate pity and horror by the most glowing pictures of insulted nature and humanity; — ever animated and energetic, from the love of fame, which is the inherent passion of genius; — firm and indefatigable, from a strong prepossession of the justice of their cause. Gentlemen, when the author sat down to write

* Edinburgh Review, vol. xvi. 109.

the book now before you, all this terrible, unceasing, exhaustless artillery of warm zeal, matchless vigour of understanding, consuming and devouring eloquence, united with the highest dignity, was daily, and without prospect of conclusion, pouring forth upon one private unprotected man who was bound to hear it in the face of the whole people of England with reverential submission and silence. I do not complain of this as I did of the publication of the charges, because it is what the law allowed and sanctioned in the course of a public trial: but when it is remembered that we are not angels, but weak fallible men, and that even the noble Judges of that high tribunal are clothed beneath their ermines with the common infirmities of man's nature, it will bring us all to a proper temper for considering the book itself which will in a few moments be laid before you. But, first, let me once more remind you, that it was under all these circumstances, and amidst the blaze of passion and prejudice which the scene I have been endeavouring faintly to describe to you might be supposed likely to produce, that the author sat down to compose the book which is prosecuted to-day as a libel."

After some compliments to the character of that gentleman, the advocate thus strikingly and skilfully states the motive by which he had been actuated, and the question which the jury had to determine: "He felt for the situation of a fellow-citizen, exposed to a trial which, whether right or wrong, is undoubtedly a severe one; — a trial certainly not confined to a few criminal acts, like those we are accustomed to, but comprehending the transactions of a whole life, and the complicated policies of numerous and distant nations; — a trial which had neither visible limits to its duration, bounds to its expense, nor circumscribed compass for the grasp of memory or understanding; — a trial which had, therefore, broke loose from the common form of decision, and had become the universal topic of discussion in the world, superseding not only every grave pursuit, but every fashionable dissipation. Gentlemen, the question you have, therefore, to try upon all this matter, is extremely simple. It is neither

more nor less than this. At a time when the charges against Mr. Hastings were, by the implied consent of the Commons, in every hand and on every table;—when by their harangues the lightning of eloquence was incessantly consuming him, and flashing in the eyes of the public;—when every man was, with perfect impunity, saying, and writing, and publishing just what he pleased of the supposed plunderer and devastator of nations; would it have been criminal *in Mr. Hastings himself* to have reminded the public that he was a native of this free land, entitled to the common protection of her justice, and that he had a defence in his turn to offer them, the outlines of which he implored them, in the meantime, to receive as an antidote to the unlimited and unpunished poison in circulation against him? THIS is, without colour or exaggeration, the true question you are to decide. Gentlemen, I tremble with indignation to be driven to put such a question in England. Shall it be endured that a subject of this country,—instead of being arraigned and tried for some single act in her ordinary courts, where the accusation, as soon at least as it is made public, is followed in a few hours by the decision—may be impeached by the Commons for the transactions of twenty years—that the accusation shall spread as wide as the region of letters—that the accused shall stand, day after day, and year after year, as a spectacle before the public, which shall be kept in a perpetual state of inflammation against him;—yet that he shall not, without the severest penalties, be permitted to submit any thing to the judgment of mankind in his defence? If this be law (which it is for you to-day to decide), such a man has NO TRIAL;—that great hall, built by our fathers for English justice, is no longer a court, but an altar;—and an Englishman, instead of being judged in it by GOD AND HIS COUNTRY, is A VICTIM AND A SACRIFICE. If you think, gentlemen, that the common duty of self-preservation in the accused himself, which nature writes as a law upon the hearts of even savages and brutes, is nevertheless too high a privilege to be enjoyed by an impeached and suffering Englishman;—or, if you think it beyond the offices of humanity and justice,

when brought home to the hand of a brother or a friend, you will say so by your verdict of GUILTY. The decision will then be *yours*, and the consolation *mine*, that I laboured to avert it. A very small part of the misery which will follow from it is likely to light upon *me;* the rest will be divided amongst *yourselves and your children.*"

Having at great length, and with unflagging spirit, examined the contents of the pamphlet, and commented on the passages charged in the information to be libellous,— with the view of ingratiating Mr. Hastings's defender with the jury, he proceeds to take a favourable view of the conduct of Mr. Hastings himself, — not venturing to defend all his acts, but palliating them so as to make them be forgiven, or even applauded, from the circumstances in which he was placed, and the instructions which he had received. Then follows the finest passage to be found in ancient or modern oratory — for imagery, for passion, for pathos, for variety and beauty of cadence, for the concealment of art, for effect in gaining the object of the orator: — "If your dependencies have been secured, and their interests promoted, I am driven, in the defence of my client, to remark, that it is mad and preposterous to bring to the standard of justice and humanity the exercise of a dominion founded upon violence and terror. It may and must be true that Mr. Hastings has repeatedly offended against the rights and privileges of Asiatic government, if he was the faithful deputy of a power which could not maintain itself for an hour without trampling upon both; — he may and must have offended against the laws of God and nature, if he was the faithful viceroy of an empire wrested in blood from the people to whom God and nature had given it; — he may and must have preserved that unjust dominion over timorous and abject nations by a terrifying, overbearing, and insulting superiority, if he was the faithful administrator of your government, which, having no root in consent or affection, no foundation in similarity of interests, nor support from any one principle that cements men together in society, could only be upheld by alternate stratagem and force. The unhappy people of India, feeble and effeminate as they are

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from the softness of their climate, and subdued and broken as they have been by the knavery and strength of civilisation, still occasionally start up in all the vigour and intelligence of insulted nature: — to be governed at all, they must be governed with a rod of iron; and our empire in the East would have been long since lost to Great Britain, if civil and military prowess had not united their efforts to support an authority, which Heaven never gave, — by means which it never can sanction.

"Gentlemen, I think I can observe that you are touched with this way of considering the subject; and I can account for it. I have not been considering it through the cold medium of books, but have been speaking of man and his nature, and of human dominion, from what I have seen of them myself, amongst reluctant nations submitting to our authority. I know what they feel, and how such feelings can alone be repressed. I have heard them in my youth from a naked savage, in the indignant character of a Prince surrounded by his subjects, addressing the governor of a British colony, holding a bundle of sticks as the notes of his unlettered eloquence. 'Who is it,' said the jealous ruler over the desert encroached upon by the restless foot of English adventurers, 'who is it that causes this river to rise in the high mountains, and to empty itself into the ocean? Who is it that causes to blow the loud winds of winter, and that calms them again in the summer? Who is it that rears up the shade of those lofty forests, and blasts them with the quick lightning at his pleasure? The same Being who gave to you a country on the other side of the waters, and gave ours to us: and by this title we will defend it,' said the warrior, throwing down his tomahawk upon the ground, and raising the war-sound of his nation. These are the feelings of subjugated men all round the globe; and, depend upon it, nothing but fear will control where it is vain to look for affection.

"The Indian Chief."

"But under the pressure of such constant difficulties, so dangerous to national honour, it might be better, perhaps, to think of effectually securing it altogether, by recalling our troops and our merchants, and abandoning our Asiatic empire.

Until this be done, neither religion nor philosophy can be pressed very far into the aid of reformation and punishment. If England, from a lust of ambition and dominion, will insist on maintaining despotic rule over distant and hostile nations, beyond all comparison more numerous and extended than herself, and gives commission to her viceroys to govern them, with no other instructions than to preserve them, and to secure permanently their revenues, — with what colour or consistency of reason can she place herself in the moral chair, and affect to be shocked at the execution of her own orders, adverting to the exact measure of wickedness and injustice necessary to their execution, and complaining only of the *excess* as the immorality; — considering her authority as a dispensation for breaking the commands of God, and the breach of them as only punishable when contrary to the ordinances of man? Such a proceeding, gentlemen, begets serious reflections. It would be, perhaps, better for the masters and servants of all such governments to join in supplication that the great Author of violated humanity may not confound them together in one common judgment."

I will only add the conclusion of his reasoning against punishing every licence of expression into which writers, warm with their subjects, may be betrayed: — "From minds thus subdued by the terrors of punishment there could issue no works of genius to expand the empire of human reason, nor any masterly compositions on the general nature of government, by the help of which the great commonwealths of mankind have founded their establishments; much less any of those useful applications of them to critical conjunctures, by which, from time to time, our own constitution, by the exertions of patriot citizens, has been brought back to its standard. Under such terrors all the great lights of science and civilisation must be extinguished: for men cannot communicate their free thoughts to one another with a lash held over their heads. It is the nature of every thing that is great and useful, both in the animate and inanimate world, to be wild and irregular; and we must be contented to take them with the alloys which belong to them, or live without them.

Genius breaks from the fetters of criticism; but its wanderings are sanctioned by its majesty and wisdom when it advances in its path: subject it to the critic, and you tame it into dulness. Mighty rivers break down their banks in the winter, sweeping to death the flocks which are fattened on the soil that they fertilise in the summer. Tempests occasionally shake our dwellings and dissipate our commerce; but they scourge before them the lazy elements which without them would stagnate into pestilence. In like manner, Liberty herself, the last and best gift of God to his creatures, must be taken just as she is. You might pare her down into bashful regularity, and shape her into a perfect model of severe scrupulous law; but she would then be Liberty no longer: and you must be content to die under the lash of this inexorable justice, which you had exchanged for the banners of freedom."

I have been told by my father-in-law, the late Lord Abinger, who was present in Court when this speech was delivered, that the effect upon the audience was wholly unexampled; — they all actually believed that they saw before them the Indian chief with his bundle of sticks and his tomahawk; — their breasts thrilled with the notes of his unlettered eloquence, — and they thought they heard him raise the war-sound of his nation. When we now in our closet read the speech with such enthusiasm, what must indeed have been the feelings of those on whom its impression was aided by the voice, the eye, the action of the speaker! — It is a curious fact, however, that the jury deliberated two hours before they found a verdict of NOT GUILTY. In mitigation of their doubts, and to add to the triumph of the advocate, it should be stated that this trial took place before Mr. Fox's Libel Act, — at a time when juries were told by Judges that their only province was to consider whether the writing alleged to be libellous had been published by the defendant.*

Sept. 25. 1790. Erskine's first visit to Paris.

After his special retainers for the Summer circuit were over, the fatigued barrister went to Paris for a few weeks to witness the progress of the Revolution, and when he came

* 22 St. Tr. 237—308. Erskine's Speeches, ii. 205—288.

back he expressed great admiration of what he had seen; — but I rather suspect that from his love of fun and frolic he had mystified a little the solemn and severe Romilly, who, in a letter then written to Dumont, says, "Erskine is returned from Paris a violent democrat. He has had a coat made of the uniform of the Jacobins, with buttons bearing this inscription, '*Vivre libre ou mourir;*' and he says he intends to wear it in the House of Commons." *

His opinion that an impeachment is abated by a dissolution of Parliament.

On the dissolution of Parliament, which took place in the autumn of this year, Erskine was again returned to the House of Commons for Portsmouth, and he continued to represent that borough till he was raised to the peerage. Upon various occasions he added great weight to the resistance offered by the Whig Opposition to unconstitutional measures; but, perhaps, it would have been as well if he had contented himself with the fame of a great advocate, which his genius had shown to be at least equal to that of a great parliamentary debater.

On the first question which drew him forth I think he was decidedly wrong. Misled by pity for Hastings, or by dislike to Burke, he went against his party and against clear principles of constitutional law, in contending that the grand impeachment was at an end by the dissolution. In his speech on this subject he actually broke down — and suddenly resuming his seat, he pleaded as an excuse the fatigue he had gone through in the early part of the day, and the extreme heat of the House. Next evening he resumed his argument — but with no success, although he spoke from copious notes of all the authorities in point. Pitt following, was very severe upon him, and in answer to his remark, that the country should be governed by law, Burke observed, that "he should be glad to see the country governed by law, *but not by lawyers.*" To the complaint of the enormous length of the trial, Burke asked "whether the learned gentleman remembered, that, if the trial had continued three years, the oppressions had continued twenty? — whether, after all, there were hour-glasses for measuring the grievances of man-

Dec. 22. 1790.

* Romilly's Memoirs, i. p. 408.

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kind? — or whether they whose ideas never travelled beyond a nisi prius case were better qualified to judge what ought to be the length of an impeachment, than a rabbit who breeds six times a year was able to judge of the time proper for the generation of an elephant?" Burke likewise sneered at his note-book, — first calling it "a pamphlet," and then likening him to David armed with a stone and a sling — "but with the difference in this case that they could do no execution." Erskine declared that the "pamphlet" was nothing more than a collection of precedents copied by a friend of his for his greater convenience in referring to them. — He was properly beaten by 143 to 30.* He likewise ineffectually opposed the appointment of new managers to conduct the impeachment against the sense of a great majority of both parties.†

He is censured by Burke.

May, 1791. His speech on Fox's Libel Bill, and on parliamentary reform.

When the "Law of Libel" was brought under the consideration of the House, the learned member for Portsmouth might have been expected to have been, at last, placed upon a pinnacle; but, even then, he did not advance his parliamentary reputation. In rising to second Mr. Fox's motion — for leave to bring in "a Bill to declare the rights of jurors to decide generally on the merits of the case in prosecutions for libel," he offended the House by making his professional character too prominent, and by an unlucky touch of vanity. He observed that he had nothing new to bring forward on the subject; for, having been counsel in numerous trials (*which were in every body's hand*) involving the existence of the liberty of the Press, he had urged all that could be said, and that to attempt again to speak upon the same subject appeared to him "like telling a tale that has been told." He did, nevertheless, speak at considerable length; and bringing out his commonplaces without freshness or life, they seem only to have vexed the dull ear of the drowsy listeners.‡

April, 1792.

On Mr. Grey's motion for a reform in Parliament, however, he defended with great animation the proceedings of the So-

* 28 Parl. Hist. 1035. 1074. 1168. 1171. † Ib. 1238.
‡ 29 Parl. Hist. 577. 593. 598.

ciety of the Friends of the People, of which he was a member, and he animadverted with good effect on the tergiversation of Mr. Pitt, who, having been the most zealous of reformers, was now an enemy to all reform.

Schism among the Whigs.

From the progress of the French Revolution the world was rapidly assuming a new aspect. In England there was a division among the Whigs, — one section of the party viewing the movement as favourable to general liberty, and another dreading that it would introduce confusion into this country. To the former belonged Erskine, and to the latter, his patron, the Prince of Wales. Whoever may question the prudence of his conduct at this juncture, all must admire his spirit and his disinterestedness. Regardless of present favour and of future promotion, as compared with the discharge of his duty, he resisted all solicitations to join the "Alarmists," although, if he had done so, he was sure of immediately sharing with them the patronage of the Crown. At the commencement of his political career he had attached himself to Mr. Fox; and to *his* principles, through good report and through evil report, he ever adhered.

Part taken by Erskine.

In consequence, he severely censured the policy of seeking to oppose Jacobinism by new penal laws. On one occasion he observed with great force: "The question is, whether the Constitution is to be preserved by coercion, or in its own spirit and by its own principles — whether you choose to create disaffection and enmity in the people, or to conciliate them by the language of confidence and affection. Say to them frankly and sincerely, 'There is your Constitution, handed down to you from your fathers — created by their courage, and preserved and improved from age to age by their wisdom and virtue. It is now yours with all its blessings, and it depends upon your love and attachment for its support.' Instead of loading them with abuse and calumny, we ought to meet their complaints, to redress their grievances, and, by granting them a fair representation, remove the ground of their discontent."*

* 30 Parl. Hist. 58.

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His statement of the sufferings of the troops during war.

In recommending that friendly relations should be kept up with the French Republic, he gave the following heart-rending description of the evils to be encountered by our brave defenders in arms: "The life of a modern soldier is ill represented by heroic fiction. War has means of destruction more formidable than the cannon and the sword. Of the thousands and ten thousands who perished in our late contests with France and Spain a very small part ever felt the stroke of an enemy; the rest languished in tents and ships, amidst damps and putrefaction, — pale, torpid, spiritless, and helpless, — gasping and groaning, unpitied among men, made obdurate by long continuance of hopeless misery, — and were at last whelmed into pits, or heaved into the ocean, without notice, without remembrance. Thus, by incommodious encampments and unwholesome stations, where courage is useless and enterprise impracticable, fleets are silently dispeopled, and armies sluggishly melt away." *

His opposition to the Traitorous Correspondence Bill.

In a violent attack on the "Traitorous Correspondence Bill," he said: "It is urged that the circumstances of the time call for this extraordinary measure. I desire to know what are those circumstances which can justify lessening or endangering the freedom of the country. I know of nothing which has happened, except that a false alarm has been propagated for the purpose of strengthening the hands of Government and weakening public liberty; and by this artifice Ministers are to have unbounded confidence, and their opponents are to be stigmatised by distrust, and libelled by suspicions of treason and rebellion." †

He made another elaborate speech in favour of parliamentary reform, bringing forward most of the arguments which proved triumphant forty years after, — although so low was the cause at that time that the motion was rejected by a majority of 282 to 41. ‡

But we must again attend him to the Forum. — His firmness was now put to a severe trial — and he gave a memorable example of what may be expected from an English

* 30 Parl. Hist. 97. † Ib. 590. ‡ Ib. 826. 925.

Prosecution of Paine's "Rights of Man."

advocate. Wisely, the Government had taken no notice of the "First Part of Paine's Rights of Man," and it had attracted little notice; but the "Second Part," containing some offensive ribaldry about William III. and George I., with very indecorous aspersions upon the monarchical and aristocratical branches of our Government, its circulation was infinitely increased by the Attorney-General filing an *ex officio* information against the author. A retainer for the defendant was sent to Erskine, and the question was, "whether he should accept it?" He himself did not hesitate one moment; for, although if he had read the publication he must have highly disapproved of it, the cause was to be tried in the Court in which he practised as a barrister; and he was bound, when called upon, to defend the party accused to the best of his ability, by all legal and honourable means.

Attempts to deter Erskine from being counsel for the defendant.

However, several of his friends earnestly persuaded him to refuse the retainer, and among these was Lord Loughborough, who ought to have known better, but who thought that at last he had the Great Seal within his grasp. Erskine himself, many years after, gave the following amusing account of their interview: — "In walking home one dark November evening, across Hampstead Heath, I met Loughborough coming in an opposite direction, apparently with the intention of meeting me. He was also on foot. 'Erskine,' he said, 'I was seeking you, for I have something important to communicate to you.' There was an unusual solemnity in his manner, and a deep hollowness in his voice. We were alone. The place was solitary. The dusk was gathering around us — and not a voice — not a footstep — was within hearing. I felt as Hubert felt, when John half opened, half suppressed the purpose of his soul, in that awful conference which Shakspeare has so finely imagined. After a portentous pause, he began: — 'Erskine, you must not take Paine's brief.' — 'But I have been retained, and I will take it, by G—d,' was my reply." Messages to the same effect were brought to him from the Prince of Wales; but he was inexorable. By many well-meaning people, ignorant of professional etiquette, and of

His meeting with Lord Loughborough on Hampstead Heath.

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what is required by a due regard for the proper administration of criminal justice, his obstinacy was much condemned, and scurrilous attacks were made upon him in the Government newspapers.

Dec. 18. 1792. His speech in defence of Thomas Paine.

At last the day of trial arrived, and he was at his post. Here he met with an unexpected difficulty, for the Attorney General produced a letter, lately written from Paris by Thomas Paine's own hand, in which he acknowledged himself to be the author, and applied a number of most opprobrious epithets both to the King and the Prince of Wales. Erskine, almost appalled, thus began:—"Gentlemen, if the Attorney General felt the painful embarrassments he has described, you may imagine what MINE must be: he can only feel for the august character he represents in this place as a subject for his sovereign—too far removed by custom from the intercourse which generates affection to produce any other sentiments than those that flow from a relation common to us all: but it will be remembered that I stand in the same relation towards another great person more deeply implicated by this supposed letter, who, not restrained from the cultivation of personal attachments by those qualifications which must always secure them, has exalted my duty to a Prince into a warm and honest affection between man and man." He then alludes to the attacks made upon himself, connected with this cause: "Every man within hearing at this moment, nay, the whole people of England, have been witnesses to the calumnious clamour that, by every art, has been raised and kept up against me. In every place where business or pleasure collect the people together, day after day, my name and character have been the topics of injurious reflection. And for what? only for not having shrunk from the discharge of a duty which no personal advantage recommended, and which a thousand difficulties repelled. But, gentlemen, I have no complaint to make against the printers of these libels, nor even against their authors: the greater part of them, hurried perhaps away by honest prejudices, may have believed they were serving their country by rendering me the object of its suspicion and contempt; and if

there have been amongst them others who have mixed in it from personal malice and unkindness, I thank God I can forgive *them* also. Little indeed did they know me, who thought that such calumnies would influence my conduct: I will for ever—at all hazards—assert the dignity, independence, and integrity of the ENGLISH BAR, without which impartial justice, the most valuable part of the English Constitution, can have no existence. From the moment that any advocate can be permitted to say that he *will*, or will *not*, stand between the Crown and the subject arraigned in the Court where he daily sits to practise, from that moment the liberties of England are at an end. If the advocate refuses to defend from what *he may think* of the charge or of the defence, he assumes the character of the Judge; nay, he assumes it before the hour of judgment; and, in proportion to his rank and reputation, puts the heavy influence of perhaps a mistaken opinion into the scale against the accused, in whose favour the benevolent principle of English law makes all presumptions, and which commands the very Judge to be his counsel." He then proceeds to the defence, and lays down, with admirable discrimination, the limits of free discussion on political subjects: "The proposition which I mean to maintain, as the basis of the liberty of the press, and without which it is an empty sound, is this:—that every man not intending to mislead, but seeking to enlighten others with what his own reason and conscience, however erroneously, have dictated to him as truth, may address himself to the universal reason of a whole nation, either upon the subject of governments in general, or upon that of our own particular country; that he may analyse the principles of its constitution, point out its errors and defects, examine and publish its corruptions, and warn his fellow-citizens against their ruinous consequences, and exert his whole faculties in pointing out the most advantageous changes in establishments which he considers to be radically defective, or sliding from their object by abuse. All this every subject of this country has a right to do, if he contemplates only what he thinks would be for its advantage, and but seeks to

change the public mind by the conviction that flows from reasonings dictated by conscience. If, indeed, he writes what he does not think; if, contemplating the misery of others, he wickedly condemns what his own understanding approves; or, even admitting his real disgust against the government or its corruptions, if he calumniates living magistrates, or holds out to individuals that they have a right to run before the public mind in their conduct; that they may oppose by contumacy or force what private reason only disapproves; that they may disobey the law because their judgment only condemns it; or resist the public will, because they honestly wish to change it,—he is then a criminal upon every principle of rational policy, as well as upon the immemorial precedents of English justice; because such a person seeks to disunite individuals from their duty to the whole, and excites to overt acts of misconduct in a part of the community, instead of endeavouring to change, by the impulse of reason, that universal assent, which in this and every country constitutes the law for all."

But his difficulty was to bring Paine's book within the category of useful publications; and so little impression did he now make upon the jury, that as soon as he had concluded, without hearing the reply or the summing up, they found a verdict of GUILTY.

As a reward for the brave and honest defence which his duty compelled him to make for his client, he was, to the lasting disgrace of those from whom the measure proceeded, removed from his office of Attorney General to the Prince of Wales. He thus adverted to the fact in his defence of Horne Tooke:—"Gentlemen, Mr. Tooke had an additional and a generous motive for appearing to be the supporter of Mr. Paine:—the Constitution was wounded through his sides. I blush, as a Briton, to recollect that a conspiracy was formed among the highest orders to deprive this man of a British trial. This is the clue to Mr. Tooke's conduct, and to which, if there should be no other witnesses, I will step forward to be examined. I assert that there was a conspiracy to shut out Mr. Paine from the privilege of

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being defended: he was to be deprived of counsel, and I, who now speak to you, was threatened with the loss of office if I appeared as his advocate. I was told in plain terms that I must not defend Mr. Paine. I did defend him, and I did lose my office."

Letter from him explaining his conduct in this affair.

Of this transaction Lord Erskine, a few years before his death, gave a detailed account, in a letter addressed to Mr. Howell, editor of the State Trials:* "When Attorney General to the Prince of Wales, I was retained by Thomas Paine in person to defend him on his approaching trial for publishing the Second Part of his 'Rights of Man;' but it was soon intimated to me by high authority, that it was considered to be incompatible with my situation, and the Prince himself, in the most friendly manner, acquainted me that it was highly displeasing to the King, and that I ought to endeavour to explain my conduct, which I immediately did in a letter to his Majesty himself, in which, after expressing my sincere attachment to his person, and to the constitution of the kingdom, attacked in the work which was to be defended, I took the liberty to claim, as an invaluable part of that very constitution, the unquestionable right of the subject to make his defence by any counsel of his own free choice, if not previously retained or engaged by office from the Crown; and that there was no other way of deciding whether that was or was not my own situation as Attorney General to the Prince, than by referring, according to custom, that question to the Bar, which I was perfectly willing, and even desirous to do. In a few days afterwards I received, through my friend the late Admiral Paine, a most gracious message from the Prince, expressing his deep regret in feeling himself obliged to receive my resignation, which was accordingly sent. But I owe it to his Royal Highness to express my opinion, that, circumstanced as he was, he had no other course to take in those disgraceful and disgusting times, and that my retainer for Paine was made a pretext by the King's Ministers for my removal, because my worthy and excellent friend Sir A.

* St. Tr. vol. xxvi. p. 715.

Pigot was removed from the office of the Prince's Solicitor General at the very same moment, although he had nothing whatever to do with Mr. Paine or his book. The fact is, that we were both, I believe, at that time members of a society for the reform of Parliament, called 'The Friends of the People.'"

"It would, however," continues Lord Erskine, "be most unjust as well as ungrateful to the Prince Regent not to add, that in a few years afterwards his Royal Highness, of his own mere motion, sent for me to Carlton House, whilst he was still in bed under a severe illness, and, taking me most graciously by the hand, said to me, that though he was not at all qualified to judge of retainers, nor to appreciate the correctness or incorrectness of my conduct in the instance that had separated us, yet that, being convinced I had acted from the purest motives, he wished most publicly to manifest that opinion, and therefore directed me to go immediately to Somerset House, and to bring with me, for his execution, the patent of Chancellor to his Royal Highness, which he said he had always designed for me; adding, that owing to my being too young when his establishment was first fixed, he had declined having a Chancellor at that time; that during our separation he had been more than once asked to revive it, which he had refused to do, looking forward to this occasion; and I accordingly held the revived office of Chancellor to the Prince of Wales until I was appointed Chancellor to the King, when I resigned it, in conformity with the only precedent in the records of the Duchy of Cornwall, viz. that of Lord Bacon, who was Chancellor to Henry Prince of Wales, and whose resignation is there recorded, because of his acceptance of the Great Seal in the reign of King James the First."

"Reign of Terror."

Whether the prosecution of "Paine's Rights of Man" was *discreet* or not, no one could justly complain of it as an infringement of public liberty, but Lord Loughborough was soon after Chancellor, and the "Reign of Terror" began. If not resisted by Erskine, to what might it not have led? I have already mentioned the case of John Frost, the first

March, 1793.

Rex v. Frost.

Erskine's speech.

victim, prosecuted on the information of a man, who had acted the part of a Government spy, for foolish words he had spoken after drinking freely in a coffee-house.* There were some passages in the speech delivered by Erskine in his defence of uncommon power and beauty: "Gentlemen, it is impossible for me to form any other judgment of the impression which such a proceeding altogether is likely to make upon your minds, than that which it makes upon my own. In the first place, is society to be protected by the breach of those confidences, and by the destruction of that security and tranquillity which constitute its very essence every where, but which, till of late, most emphatically characterised the life of an Englishman? Is government to derive dignity and safety by means which render it impossible for any man who has the least spark of honour to step forward to serve it? Is the time come when obedience to the law and correctness of conduct are not a sufficient protection to the subject, — but that he must measure his steps, select his expressions, and adjust his very looks, in the most common and private intercourses of life? Must an English gentleman in future fill his wine by a measure, lest in the openness of his soul, and whilst believing his neighbours are joining with him in that happy relaxation and freedom of thought which is the prime blessing of life, he should find his character blasted, and his person in a prison? Does any man put such constraint upon himself in the most private moments of his life, that he would be contented to have his loosest and lightest words recorded, and set in array against him in a court of justice? Thank God, the world lives very differently, or it would not be worth living in. There are moments when jarring opinions may be given without inconsistency, when Truth herself may be sported with without the breach of veracity, and when well-imagined nonsense is not only superior to, but is the very index to wit and wisdom. I might safely assert, — taking, too, for the standard of my assertion the most honourably correct and enlightened societies in the kingdom, — that if malignant

* *Ante*, p. 265.

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spies were properly posted, scarcely a dinner would end without a duel and an indictment.— When I came down this morning, and found, contrary to my expectation, that we were to be stuffed into this miserable hole in the wall (*the Court of Common Pleas*), to consume our constitutions, suppose I had muttered, passing along through the gloomy passages, 'What! is this cursed trial of Hastings going on again? Are we to have no respite? Are we to die of asthma in this damned corner? I wish to God the roof would come down, and abate the impeachment, — Lords, Commons, and all together.' *Such a wish proceeding from the mind* would be desperate wickedness, and the serious expression of it a high and criminal contempt of Parliament. Perhaps the bare utterance of such words without meaning would be irreverent and foolish; but still, if such expressions had been gravely imputed to me as the result of a malignant mind, seeking the destruction of the Lords and Commons of England, how would they have been treated in the House of Commons on a motion for my expulsion? How! the witness would have been laughed out of the House before he had half finished his evidence, and would have been voted to be too great a blockhead to deserve a worse character. Many things are, indeed, wrong and reprehensible, that neither do nor can become the object of criminal justice, because the happiness and security of social life, which are the very end and object of all law and justice, forbid the communication of them; because the spirit of a gentleman, which is the most refined morality, either shuts men's ears against what should not be heard, or closes their lips with the sacred seal of honour. This tacit but well-understood and delightful compact of social life is perfectly consistent with its safety. The security of free governments, and the unsuspecting confidence of every man who lives under them, are not only compatible but inseparable. It is easy to distinguish where the public duty calls for the violation of the private one. Criminal intention—but not indecent levities—not even grave opinions, unconnected with conduct, are to be exposed to the magistrate; and when men, which happens but seldom, without the honour or the sense

to make the due distinctions, force complaints upon Governments which they can neither approve of nor refuse to act upon, it becomes the office of juries — as it is yours to-day — to draw the true line in their judgments, measuring men's conduct by the safe standards of human life and experience."

Such was the infelicity of the times, however, that Frost was set in the pillory, expelled from his profession, and ruined for life.

Dec. 9. 1793. Rex *v.* Morning Chronicle.

The next prosecution of this sort had an issue which should have warned the Government that English juries were still awake to a sense of their duty, as guardians of the rights of Englishmen. The "Morning Chronicle," conducted with great ability and with a uniform respect for private character, as well as for the principles of our limited monarchy, had become exceedingly obnoxious by supporting parliamentary reform and the other measures for which the Foxite Whigs were contending; and the Attorney General filed an *ex officio* information against Mr. Perry and Mr. Gray, the proprietors of that journal, for having inserted in it an address of a society for political information, held at Derby, complaining of the state of the representation of the people, and other abuses, which they alleged required a remedy. When the case first stood for trial, only seven special jurors attending, the Attorney General would not pray a *tales*, but, the next term, moved to have another special jury struck. Erskine opposed this proceeding, and established a most important doctrine, that "the special jury originally summoned must be re-summoned, and try the cause;" so as to deprive the Crown officers of the power of postponing a trial till they have a jury to their mind.* When the case again came on before the same jury, Erskine began his address by saying, "If I had the slightest idea that the two gentlemen prosecuted, as proprietors of the 'Morning Chronicle,' with whom I have an intimate acquaintance, were guilty of malicious and wicked designs against the State, as charged in the information, I should leave the task of defending them to

* Lord Kenyon was at first very adverse, and said "it would be very strange if the law were so."

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others. Not that I conceive I have a right to refuse my professional assistance to any person who asks it; but I have for a day or two past been so seriously indisposed, that I feel myself scarcely equal to the common exertion of addressing the Court; and it is only from the fullest confidence in the innocence of the defendants that I come forward, for a very short space, to solicit the attention of the jury. You, gentlemen, indeed, are the sole arbitrators in this cause, and to you it belongs to decide on the whole merits of the question." —This being the first trial under the Libel Act, he said, "No one ought now to contend, as the Attorney General has done, that the criminality of the defendant in such a case is an inference of law from the fact, but (if, as one of the authors of the statute, I may be allowed to interpret its meaning) it connects and involves the law and the fact together, and obliges the jury to find in this crime, as in all others, by extrinsic as well as intrinsic means, the mind and intention with which the fact was committed. If you, gentlemen, can think that the defendants were actuated by the motive—not of wishing to reform and restore the beautiful fabric of our Constitution, somewhat impaired by time, but to subvert and destroy it, and to raise on its ruins a democracy or anarchy—an idea at which the mind of every honest man must shudder—you will find them guilty. Nay, if any one man knows or believes them to be capable of entertaining such a wish, or will say he ever heard, or had cause to know, that one sentence intimating any thing of that nature ever fell from the lips of any one of them, I will give them up. But it seems the circumstances of the times render any opinion in favour of a reform of parliament peculiarly improper, and even dangerous; and the recommendation of it, in the present moment, must be ascribed to mischievous intentions. Were I to address you, gentlemen, to petition for a reform of parliament, I would address you NOW, as the season most fit for the purpose; I would address you NOW, because we have seen in other countries the effect of suffering evils to prevail so long in a Government, and to increase to such a pitch, that it became impossible to correct them without bringing

on greater evils than those which it was the first object of the people to remove; that it became impossible to remedy abuses without opening a door to revolution and anarchy. There are many diseases which might be removed by gentle medicines in their beginning, and even corrected by timely regimen, which, when neglected, are sure to bring their victims to the grave."—Having commented at considerable length upon the article alleged to be libellous, he said, "My learned friend cannot produce a single instance in the course of seventeen years—the term of my acquaintance with the defendants—in which they have been charged in any court with public libel, or with private defamation; and I challenge the world to produce a single instance in which they have made their journal the vehicle of slander, or in which they have published a single paragraph to disturb the happiness of domestic life, to wound the sensibility of innocence, or to outrage the decencies of well-regulated society. They have displayed in the conduct of their paper a degree of learning, taste, and genius, superior to what has distinguished any similar undertaking. You may differ in opinion with them on public questions, but you would not, for that reason, consign them to a gaol. I appeal to you, gentlemen, whether the abuses pointed out in this article do not exist in the Constitution, and whether their existence has not been admitted by all parties, both the enemies and the friends of reform. I will not say which party is right, but God forbid that honest opinion should ever become a crime."—*Lord Kenyon.* "There may be morality and virtue in this paper; and yet, *apparently*, LATET ANGUIS IN HERBA. There may be much that is good in it, and yet there may be much to censure."—The jury, after long deliberation, returned a verdict of "Publishing, but with no malicious intent;" and the Judge refusing to record this verdict, they found a general verdict of NOT GUILTY.*

The next Government prosecution assumed a very serious aspect, but was likewise so unfounded, that the parties

* Erskine's Speeches, vol. ii. 371—453.

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April 2. 1794.

Rex v. Walker.

accused, being ably defended by Erskine, were acquitted, notwithstanding the prejudice excited against them as parliamentary reformers. Mr. Walker, a respectable master-manufacturer at Manchester, and several others, were arrested for high treason, and were tried for a conspiracy to overturn the Constitution, and to assist the French in invading the realm. Some arms having been found in Mr. Walker's house, Dunn, a Government spy, swore that they had been purchased for the purpose of rebellion, and that he had been present at several consultations among the prisoners, when an insurrection had been planned, in which the arms were to be used against the King's troops. Erskine demolished him in cross-examination, and made an admirable speech to the jury,— opening the evidence he was to give, to prove that the arms (which were by no means of a formidable description) had been procured to enable Mr. Walker to defend his house against the attacks of a mob. Finding that the jury were completely with him, and that his clients were safe — in a manner very unusual with him, he concluded by indulging himself in a vein of pleasantry: — "This," said he, "is the genuine history of the business, and it must therefore not a little surprise you, that when the charge is wholly confined to the use of arms, Mr. Law should not even have hinted to you that Mr. Walker's house had been attacked, and that he was driven to stand upon his defence, as if such a thing had never had an existence. Indeed, the armoury which must have been exhibited in such a statement would have but ill suited the indictment or the evidence, and I must therefore undertake the description of it myself. The arms having been locked up, as I told you, in the bedchamber, I was shown last week into this house of conspiracy, treason, and death, and saw exposed to view this mighty armoury, which was to level the beautiful fabric of our Constitution, and to destroy the lives and properties of ten millions of people. It consisted, first, of six little swivels, purchased two years ago at the sale of Livesay, Hargrave, and Co., by Mr. Jackson, a gentleman of Manchester, who is also one of the defendants, and who gave them to Master Walker, a boy of about ten

Erskine's speech for the prisoner.

Description of an armoury to support a rebellion.

years of age. Swivels, you know, are guns so called because they turn upon a pivot; but these were taken off their props, were painted, and put upon blocks resembling the carriages of heavy cannon, and in that shape may fairly be called 'children's toys.' You frequently see them in the neighbourhood of London, adorning the houses of sober citizens, who, preferring grandeur to taste, place them upon their ramparts at Mile End or at Islington. Having, like Mr. Dunn, — I hope I resemble him in nothing else, — having like him served his Majesty as a soldier (and I am ready to serve again if my country's safety should require it), I took a close review of all I saw, and observing that the muzzle of one of them was broken off, I was curious to know how far this famous conspiracy had proceeded, and whether they had come into action; when I found that the accident had happened on firing a *feu de joie* upon his Majesty's happy recovery, and that they had been afterwards fired upon the Prince of Wales's birthday. These are the only times that, in the hands of these conspirators, these cannon, big with destruction, had opened their little mouths; — once to commemorate the indulgent and benign favour of Providence in the recovery of the sovereign, and once as a congratulation to the heir apparent of his crown on the anniversary of his birth. I went next, under the protection of the master-general of this ordnance (Mr. Walker's chambermaid), to visit the rest of this formidable array of death, and found a little musketoon about so high (*describing it*). I put my thumb upon it, when out started a little bayonet, like the jack-in-the-box which we buy for children at a fair. In short, not to weary you, gentlemen, there was just such a parcel of arms, of different sorts and sizes, as a man collecting them amongst his friends for his defence, against the sudden violence of a riotous multitude, might be expected to have collected. Here lay three or four rusty guns of different dimensions, and here and there a bayonet or broadsword, covered over with dust and rust, so as to be almost undistinguishable. We will prove by witness after witness, till you desire us to finish, that they were principally collected on the 11th of December, the day of the riot, and that from the 12th in the

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evening, or the 13th in the morning, they have lain untouched as I have described them; that their use began and ended with the necessity, and that from that time to the present there never has been in the warehouse any machine of war or weapon of destruction, from a piece of artillery to a pop-gun."

The case became so clear that Mr. Law abandoned the prosecution, and the Government spy was convicted of perjury at the same Assizes.*

* 23 St. Tr. 1055—1166. Erskine's Speeches, iii. 1—52.

CHAPTER CLXXX.

CONTINUATION OF THE LIFE OF LORD ERSKINE TILL THE CONCLUSION OF THE PROSECUTIONS FOR HIGH TREASON AGAINST THE ADVOCATES FOR A REFORM IN PARLIAMENT.

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Resolution to prosecute the members of the parliamentary son.

NOTWITHSTANDING the unfortunate result of the late State prosecutions, Ministers (it is supposed with a division of opinion in the Cabinet) resolved upon a much more extensive and a much bolder attack on public liberty, which, if it had succeeded, would have placed the lives of the great body of their opponents at their mercy. There were now several societies existing for the professed object of Parliamentary Reform — particularly the "Corresponding Society," and the "Society for Constitutional Information," — having branch societies in most of the large towns of Great Britain. At their meetings very inflammatory and indiscreet speeches were occasionally made, and some of their resolutions and printed addresses were of a very objectionable character, although the principal leaders and the great bulk of the members were attached to the Constitution. Their evil designs and their influence were much over-estimated by the Government, and a still graver error was committed in the means adopted for putting them down. It would have been highly proper to prosecute for a *misdemeanour* the individuals who could have been proved to have uttered seditious language, or to have published seditious writings, — making each party accused answerable for his own acts. But it was thought better to resort to the law of "Constructive Treason," which had received such a blow on the trial of Lord George Gordon, — to assert that these societies intended to bring about a revolution, — and therefore to insist that all who belonged to them were to be considered guilty of "compassing the death of our Lord the King," and ought to die the death of traitors. I have not a doubt that most of

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those who advised this mode of proceeding, far from being animated by any bloodthirsty disposition, or love of arbitrary power, really believed it the only means of saving the country from anarchy; although I suspect that some of them were well pleased to increase the alarm in the public mind, — to throw obloquy upon their political rivals, — and to strengthen the foundation of their own power. But in my humble opinion, severe censure is due either to their judgment or their intentions. Indeed, at this distance of time, and when an arbitrary application of the criminal law has been abandoned by all parties in the state, we are at a loss to account for an attempt which seems to us not only very unconstitutional but very foolish, — as it was not accompanied by the abolition of trial by jury.

Proceedings in Parliament.

First came secret committees of the two Houses of Parliament, and upon their reports a bill was passed suspending the Habeas Corpus Act, and containing this most reprehensible recital, to be referred to as *proof* in the prosecutions which were to follow — "that a treacherous and detestable conspiracy had been formed for subverting the existing laws and Constitution, and for introducing the system of anarchy and confusion which had lately prevailed in France." * This was more exceptionable in principle than any thing done during the reign of Charles II.; for then the fabricators of the Popish plot did not think of corroborating the testimony of Oates and Bedloe by a public statute; and there, if the facts alleged had been true, they would have amounted to a plain case of actual treason; whereas here, admitting the truth of all the facts alleged, there was no pretence for saying that any treason contemplated by the legislature had been committed. If this scheme had succeeded, not only would there have been a sacrifice of life contrary to law, but all political "agitation" must have been extinguished in England, as there would have been a precedent for holding that the effort to carry a measure by influencing public opinion through the

* Stat. 34 Geo. 3. c. 54. This declaration, the work of a ministerial committee and a ministerial majority, was relied upon in the treason trials as proof of the conspiracy.

means openly resorted to in our days, is a "compassing of the death of the sovereign." The only chance of escaping servitude would have been civil war. It is now frightful to think of the perils to which the nation was then exposed; for, on account of the horror justly caused in England by the murder of Louis XVI. and the other atrocities which had recently been perpetrated at Paris, an attempt which in other times would have excited universal disgust and indignation, was then received with considerable favour, and might have been crowned with success. But Erskine and the crisis were framed for each other. He might have passed through life a well-employed barrister, admired by his contemporaries for his skill in winning verdicts, and forgotten as soon as the grave had closed over him. But his contemporaries, who without him might have seen the extinction of freedom among us, saw it, by his peculiar powers, placed upon an imperishable basis.

Indictments for high treason.

The Grand Jury for the county of Middlesex found an indictment for high treason against twelve persons who had belonged to these societies, and had professed themselves warm friends to parliamentary reform, — the overt act laid being that they had engaged in a conspiracy to call a convention, the object of which was to bring about a revolution in the country — but it was not suggested that there was any plot against the King's life, or any preparation for force.

Erskine assigned as counsel for the prisoners.

The prisoners, upon their arraignment, had Erskine assigned as their counsel, with Gibbs, hitherto only known as a good lawyer — from the distinction he now acquired, afterwards Attorney General and Chief Justice of the Common Pleas. Declining to be tried jointly, the Attorney General selected Thomas Hardy, a shoemaker, as the one against whom he could make the strongest case.

Trial of Hardy.

This memorable trial began on Tuesday the 28th of October, 1794, at the Old Bailey, before Lord Chief Justice Eyre, and several other Judges, sitting under a special commission of oyer and terminer. Sir John Scott spoke nine hours in opening the case for the prosecution. In the annals of English criminal jurisprudence there had not yet been

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an instance of a trial for high treason that had not been finished in a single day. When the hour of midnight struck, scarcely any progress had been made in adducing the evidence for the Crown, which was to consist of innumerable speeches made, and resolutions passed, during many months, not only in London, but at Manchester, Sheffield, Norwich, Edinburgh, and many other places, when the prisoner had been at a distance of hundreds of miles, — of toasts at anniversary dinners, — and of voluminous publications issued by the obnoxious societies, or which the societies had approved of, or which had for their authors individual members of the societies supposed to be implicated in the conspiracy.

Erskine's skilful conduct.

Erskine, who did not despise any arts by which he might conciliate the jury, expressed his readiness to consent that they should go to their several homes, saying, "I am willing that they shall be as free as air, with the single restriction that they will not suffer themselves to be approached in the way of influence; and the gentlemen will not think it much that this should be required, *considering the very peculiar nature of this case.*"

An objection, however, was made to the jurymen separating; and it was agreed that they should pass the night under the care of four bailiffs in a large room in an adjoining tavern, in which couches were strewed for them. But before they retired to talk over the subject together, and to ruminate upon it, Erskine, perceiving that a deep impression had been made upon them by the solemn and seemingly candid address of the Attorney General, was determined to give them some other topic of conversation, and some other food for reflection. As soon, therefore, as the four bailiffs had been sworn to do their duty, he thus spoke, while the jury listened: "My Lord, all this immense body of papers has been seized, and been a long time in the hands of the officers of the Crown. We applied to see them, but were refused — we applied to the Privy Council, and were refused — we were referred to your Lordship, because they knew that your Lordship could not grant such a request. Here we are, therefore, with all these papers tumbled upon our hands, without the least

opportunity of examining them; and yet from this load of papers, which the Attorney General took nine hours to read, — the act of compassing the King's death is to be collected. I trust your Lordships will be disposed to indulge me — indeed I shall expect, in justice to the prisoner, that I may have an opportunity, before I address the jury upon this mass of evidence, to know what is in it. I declare, upon my honour, as far as relates to myself and my friend who is assigned as counsel for the prisoner, we have no design whatever to trespass upon the patience of the Court, and your Lordships may have seen to-day how little of your time we have consumed. We have no desire upon earth but to do our best to save the man for whom your Lordships have assigned us to be counsel, and whom we believe to be innocent."

The Court sat day by day at eight o'clock in the morning, and continued sitting till past midnight. Erskine's attention was never for one moment relaxed, and he was ever on the watch for an opportunity of exciting the sympathy of the jury by interlocutory speeches, — particularly in arguing questions of evidence.

The proceedings of the Convention at Edinburgh being proffered, he objected that the Crown must first show that they were approved of by Mr. Hardy, saying: — "I confess I am not very anxious to shut out any evidence — I very probably do not understand it; but I do not see how it bears upon the case. He is charged with 'compassing and imagining the death of our Sovereign Lord the King,' whose life is dear, my Lord, to all the kingdom. No act can be given in evidence before your Lordships, nor will I sit silent to hear any act given in evidence that does not tend to show the prisoner at the bar to have had that wicked intention. When I stand here defending the man who holds his life under the law (and I am not defending his life only, but my own life, and the life of every man in the country), I must take care that the rules of evidence are observed." On a subsequent occasion, in objecting to similar evidence, he tried to awaken the jury to the consequences of this proceeding by observing, "How many thousands of his Majesty's subjects are to be

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brought to this place, I cannot tell; for the conspiracy which is alleged comprehends all the members of every one of these societies. I say, in my judgment, upon the evidence that is before the Court, every man who has been a member of any of these societies, every man who has been connected with their proceedings, is liable to be put in the same situation as Mr. Hardy, and, according to the rule contended for, any thing written by any one person belonging to any of these societies would be equally evidence against him."

His object was to keep in check, without insulting, Lord Chief Justice Eyre, who had, in addressing the Grand Jury, referred to the recent Act of Parliament as proof of the conspiracy, and, though he ruled the questions of law which arose very conscientiously, evidently had a leaning towards the prosecution.

While a crown witness was under cross-examination, and equivocating so as to revolt the jury, the Chief Justice, interposing, took him out of the counsel's hands, and in a coaxing manner repeated the question to him.—*Erskine.* "I am entitled to have the benefit of this gentleman's deportment, if your Lordship will just indulge me for one moment." —*L. C. J. Eyre.* "Give him fair play."—*Erskine.* "He has certainly had fair play. I wish *we* had as fair play,—but that is not addressed to the Court."—*Attorney General.* "Whom do you mean?"—*Erskine.* "I say the prisoner has a right to fair play."—*Garrow.* "But you declared that it was not said to the Court."—*Erskine.* "I am not to be called to order by the Bar." Being exceedingly afraid that an impression might be made upon the minds of the jury, which he might not be able to remove, by an infamous paper pretending to be a play-bill, to announce "an entertaining farce called LA GUILLOTINE, or GEORGE'S HEAD IN A BASKET,"—before it was read he said, most irregularly, but with an air that in him alone excused the irregularity, "The paper was fabricated by the spies who support the prosecution!"—*Attorney General.* "You shall not say that till you prove it."—*Erskine.* "I shall prove it."

He showed admirable skill in regulating his questions to

His examination of the witnesses.

the Crown witnesses by the disposition which they displayed. One ex-member of the Corresponding Society, whom he found very pliable, he thus interrogated. — *Q.* "Had you any idea, when you became a member, or while you continued there, by parliamentary reform to touch the King's Majesty or the House of Lords?" — *A.* "No, never; I never had that idea." — *Q.* "Never in your life?" — *A.* "No." — *Q.* "I ask you, in the presence of God, to whom you will answer, had you any idea of destroying the King or the House of Lords?" — *A.* "No, God forbid!" — *Q.* "Then I understand you to say, upon the oath you have taken, and subject to the consequences here and hereafter, that there was no such idea either in your own mind, or, from what you know from others, from what they said and what they did, in the minds of any other of the members?" — *A.* "Never." — *Q.* "Have you any reason to believe—I ask you to look upon your own soul when you answer the question —that though they might not intend mischief originally, when associated they began to intend mischief?" — *A.* "No, never."

Wishing to exhibit the consummate conductor of a cause before a jury, not a mere rhetorician, I add the following dialogue, which, at least to those familiar with such scenes, strikingly exhibits his bearing to the Court and to his adversary. A witness, who pretended to relate from notes he said he had taken of the proceedings of a reform society, having been asked for a date, and having answered that he *thought* it was about such a time, Erskine exclaimed, "None of your *thinking*, when you have the paper in your hands!" *Witness.* "I have not a memorandum of the date." — *Erskine.* "What date have you taken, good Mr. Spy?" — *Witness.* "I do not think on such an occasion being a spy is any disgrace." — *Eyre, C. J.* "These observations are more proper when you come to address the jury." — *Attorney General.* "Really that is not a proper way to examine witnesses. Lord Holt held strong language to such sort of an address from a counsel to a witness who avowed himself a spy." — *Erskine.* "I am sure I shall always pay that attention to the Court which is due from me but I am not to be told by

the Attorney General how I am to examine a witness!"—*Attorney General.* "I thought you had not heard his Lordship."—*Erskine.* "I am much obliged to his Lordship for the admonition he gave me. I heard his Lordship, and I heard you,—whom I should not have heard."

He would even try to ingratiate himself with the jury by being facetious, although there was such a weight upon his own mind. He asked a spy, who had assumed the name of *Douglas,* what was his true name?—*Witness.* "As for taking the name of Douglas, I took it from a play-bill."—*Erskine.* "Pray how long did *you play the part of Norval?*" The jury laughed, and disbelieved all he had said.

Controversy with Chief Justice Eyre.

At last, when the Court was about to adjourn at two o'clock on Saturday morning to the usual hour of eight the same day, the Attorney General intimated that he should not take above forty minutes longer to finish his case. Erskine, then pointing out very feelingly the embarrassment of his situation, as he had not had time to read any part of the evidence, prayed a few hours to enable him to arrange his papers, and prepare for the defence. Eyre, most indecently, under pretence of consulting the convenience of the jury, refused the request, and proposed that the evidence for the prisoner should proceed, while the counsel was preparing his speech, observing very coolly, that "it was a matter of indifference in what order they were presented."—*Erskine.* "I should be sorry to put the jury to any inconvenience: I do not shrink from my duty, but I assure your Lordship that during the week I have been nearly without natural rest, and that my physical strength is quite exhausted."—*Eyre, C. J.* "What is it you ask for?"—*Erskine.* "As I stated before, the Attorney General found it necessary to consume nine hours. I shall not consume half that time, if I had an opportunity of doing that which I humbly request of the Court."—*Eyre, C. J.* "We have offered you an expedient; neither of you say whether you accept it?" Gibbs spurned at it; and then Erskine, pointing out how it might prejudice the prisoner, on trial for his life, proposed an adjournment till twelve next day. Eyre reluctantly agreed to eleven, but would make no

further concession. — *Erskine.* "I should be glad if your Lordships would allow another hour." — *Eyre, C. J.* "I feel so much for the situation of the jury, that, on their account, I cannot think of it." — *Erskine.* "My Lord, I never was placed in such a situation in the whole course of my practice before; — however, I will try to do my duty." — *Jury.* "My Lord, we are extremely willing to allow Mr. Erskine another hour, if your Lordship thinks proper." — *Eyre, C. J.* "As the jury ask it for you, I will not refuse you."

Cheered by this good omen, Erskine went home, and after a short repose, arranged the materials of "a speech which will last for ever."*

Erskine's "speech which will live for ever."

He began at two o'clock on Saturday afternoon, and spoke seven hours — a period that seemed very short to his hearers, and in reality was so, considering the subjects he had to deal with, and the constitutional learning, the powerful reasoning, the wit, and the eloquence which he condensed into it. This wonderful performance must be studied as a whole, by all who are capable of understanding its merits; for the enunciation of principles is so connected with the inferences to be drawn from the evidence, and there is such an artful though seemingly natural succession of topics to call for the pity and the indignation of the jury — to captivate their affections and to convince their understandings — that the full beauty of detached passages cannot properly be appreciated. But some I must introduce, or this memoir might be considered very defective. Having judiciously commenced with eulogising the Constitution of England and reprobating the violence which had disgraced the revolution in France, he prayed that if this prosecution had been commenced to avert from us the calamities incident to civil confusion, the prisoner should not be made a sacrifice. "Let not *him* suffer under vague

* "I have been indulged by Mr. Rogers, the celebrated author of the 'Pleasures of Memory,' and other poems, with Mr. Horne Tooke's copy of Hardy's trial, where I find, in Mr. Tooke's handwriting, at the end of this argument, the following remarkable note: 'THIS SPEECH WILL LIVE FOR EVER.'" — *Editor of the State Trials*, vol. xxiv. p. 877. — I have myself been lately favoured with a view of the book, and of the note.

expositions of tyrannical laws more tyrannically executed. Let not *him* be hurried away to pre-doomed execution, from an honest enthusiasm for the public safety. I ask for him a trial by this applauded Constitution of our country: I call upon you to administer the law to *him* according to our own wholesome institutions, by its strict and rigid letter. However you may eventually disapprove of any part of his conduct, or, viewing it through a false medium, may think it even wicked, I claim for him as a subject of England that the law shall decide upon its criminal denomination. I protest in his name against all speculations respecting *consequences* when the law commands us to look only to INTENTIONS. If the state be threatened with evils, let Parliament administer a *prospective* remedy; but let the prisoner hold his life UNDER THE LAW. Gentlemen, I ask this solemnly of the Court, whose justice I am persuaded will afford it to me; I ask it more emphatically of you, the *jury*, who are called upon by your oaths to make a true deliverance of your countryman from this charge: but lastly and chiefly I implore it of HIM in whose hands are all the issues of life, whose merciful eye expands itself over all the transactions of mankind,—at whose command nations rise and fall, and are regenerated. I implore it of GOD HIMSELF, that He will fill your minds with the spirit of truth, so that you may be able to find your way through the labyrinth of matter laid before you—a labyrinth in which no man's life was ever before involved in the whole history of human justice or injustice."

He then proceeds to analyse the indictment, and to lay down the law,—contending, with great subtlety, "that the compassing of the King's death, or, in other words, the traitorous intention to destroy his *natural existence*, is the treason, and not the overt acts, which are only laid as manifestations of the traitorous intention, or, in other words, as EVIDENCE competent to be left to a jury to prove it; and that no conspiracy to levy war against the King, nor any conspiracy against his *regal character* or *capacity*, is a good overt act of compassing *his death*, unless some force be exerted or in contemplation against the KING'S PERSON;

and that such force, so exerted and in contemplation, is not substantively the treason of compassing, but only competent in point of law to establish it, if the jury, by their verdict of *Guilty*, draw that conclusion of fact from the evidence of the overt act."

Proceeding to consider how the charge was substantiated, he says: "The unfortunate man whose innocence I am defending is arraigned before you of high treason, upon evidence not only repugnant to the statute, but such as never yet was heard of in any capital trial — evidence which, even with all the attention you have given to it, I defy any one of you at this moment to say of what it consists — evidence (I tremble for my boldness, in standing up for the life of a man, when I am conscious I am incapable of understanding from it even what acts are imputed to him) — evidence which has consumed four days in the reading, made up from the unconnected writings of men unknown to one another, upon a hundred different subjects — evidence the very listening to which has filled my mind with unremitting distress and agitation, and which, from its discordant nature, has suffered me to reap no advantage from your indulgence, but which, on the contrary, has almost set my brain on fire with the vain endeavour to analyse it. . . . . But read these books over and over again, and let us stand here a year and a day in discoursing concerning them, still the question must return to what you, and you only, can resolve — Is he guilty of that base detestable intention to destroy the King? — not whether you suspect, nor whether it be probable — not whether he *may* be guilty — no, but that '*provably*' he is guilty. If you can say this upon the evidence, it is your duty to say so, and you may with a tranquil conscience return to your families, though by your judgment the unhappy object of it must return no more to his. Alas! gentlemen, what do I say? He has no family to return to; the affectionate partner of his life has already fallen a victim to the surprise and horror which attended the scene now transacting. But let that melancholy reflection pass — it should not, perhaps, have been introduced — it certainly

ought to have no weight with you, who are to judge upon your oaths. I do not stand here to desire you to commit perjury from compassion; but, at the same time, my earnestness may be forgiven, since it proceeds from a weakness common to us all. I claim no merit with the prisoner for my zeal; it proceeds from a selfish principle inherent in the human heart. I am counsel, gentlemen, for myself. In every word I utter, I feel that I am pleading for the safety of my own life, for the lives of my children after me, for the happiness of my country, and for the universal condition of civil society throughout the world."

He then proceeded to show that the Societies impeached had only adopted the doctrines of Lord Chatham and other great reformers whose loyalty had not been doubted, and that the Duke of Richmond had gone much farther than Mr. Hardy: "Gentlemen, the Duke of Richmond's plan was universal suffrage and annual parliaments; and urged, too, with a boldness which, when the comparison comes to be made, will leave in the back-ground the strongest figures in the writings on the table. I do not say this sarcastically; I mean to speak with the greatest respect of his Grace, both as to the wisdom and integrity of his conduct; for, although I think, with Mr. Fox, that annual parliaments and universal suffrage would be nothing like an improvement in the Constitution, yet I confess that I find it easier to say so than to answer the arguments which the Duke of Richmond has adduced in support of his sweeping measure of reform." Having pointed out that the present Prime Minister himself, who must be supposed to have directed these prosecutions against associates and disciples, had been a reformer like the prisoner at the bar, he says: "It would be the height of injustice and wickedness to torture expressions, and pervert conduct into treason and rebellion which had recently lifted up others to the love of the Nation, to the confidence of the Sovereign, and to all the honours of the State! Why is every thing to be held up as *bonâ fide* when the example is set, and *malâ fide* when it is followed? Why have not I as good a claim to take credit for honest purpose in the poor

man I am defending — against whom not a contumelious expression has been proved — as when we find the same expressions in the mouths of the Duke of Richmond and Mr. Pitt?"

In palliating the sympathy of the societies with the French Republic, which was likely to make an unfavourable impression on the Jury, he dwelt with much force upon the combination of the Continental Sovereigns to extinguish liberty in France, and thus, in his own person, avowed the sentiments which were urged as proof to support the charge of high treason: "Men may assert the right of every people to choose their government without seeking to destroy their own. This accounts for many expressions imputed to the unfortunate prisoners, which I have often uttered myself, and shall continue to utter every day of my life, and call upon the spies of Government to record them. I will say anywhere without fear — nay, I will say in this Court where I stand, — that 'an attempt to interfere by despotic combination and violence with any Government which a people choose to give to themselves, whether it be good or evil, is an oppression and subversion of the natural and inalienable rights of man;' and, though the Government of this country should countenance such a system, it would not only be still legal for me to express my detestation of it, as I here deliberately express it, but it would become my interest and my duty to do so. For, if combinations of despotism can accomplish such a purpose, who shall tell me what other nation may not be the prey of their ambition? Upon the very principle of denying to a people the right of governing themselves, how are we to resist the French, should they attempt by violence to fasten their Government upon us? or what inducement would there be for resistance to preserve laws which are not, it seems, our own, but which are unalterably imposed upon us? The very argument strikes, as with a palsy, the arm and vigour of the nation. I hold dear the privileges I am contending for, not as privileges hostile to the Constitution, but as necessary for its preservation; and if the French were to intrude by force upon

the Government of our own free choice, I should leave these papers, and return to a profession *that perhaps I better understand.*" *

Having the jury now under his control, he returns with renewed force to the consideration of the tremendous consequence of the principle on which the prosecution was founded: "The delegates who attended the meetings could not be supposed to have met with a different intention from those who sent them; and if the answer to that is, that the constituents are involved in the guilt of their representatives, we get back to the monstrous position from which I observed you before to shrink with visible horror when I stated it—as it involves in the fate of this single trial every man who corresponded with these societies, or who, as a member of societies in any part of the kingdom, consented to the meeting which was assembled, or to the meeting which was in prospect. Upwards of forty thousand persons, upon the lowest calculation, must alike be liable to the pains and penalties of the law, and hold themselves as tenants at will under the ministers of the Crown. The campaign of Judge Jeffreys in the west was nothing to what may follow. In whatever aspect, therefore, this prosecution is regarded, new difficulties and new uncertainties and terrors surround it."

But I must give a specimen of the manner of his commenting upon the testimony of the witnesses — which, after all, is the most important function of an advocate before a jury. Thus he handled one of the government spies who had been examined: "Mr. Grove professed to speak from notes, yet I observed him frequently looking up to the ceiling whilst he was speaking — when I said to him, 'Are you now speaking from a note? Have you got any note of what you are now saying?' He answered, 'Oh no; this is from recollection.' Good God Almighty! *Recollection* mixing

* We may conceive to what a pitch he had worked up the feelings of the jury when he could venture upon this martial ebullition, which, in cooler moments, would have excited a titter. In reality he had no taste for the art of war, and never had made greater progress in it than being able, in the absence of the captain, pretty tolerably to put his company of the Royals through the manual and platoon exercise.

itself up with *notes* in a case of HIGH TREASON. He did not even take down the words; nay, to do the man justice, he did not even affect to have taken the words, but only the *substance*, as he himself expressed it. Oh, excellent evidence! The substance of words taken down by a spy, and supplied where defective by his memory! But I must not call him a spy, for it seems he took them *bonâ fide* as a delegate, and yet *bonâ fide* as an informer. What a happy combination of fidelity! faithful to serve, and faithful to betray! — correct to record for the benefit of the society, and correct to dissolve and to punish it! In the last precedent which could be cited of the production of such testimony, the case of Lord Stafford, accused of being concerned in the Popish plot — all the proceedings were ordered to be taken off the file and burnt, 'to the intent that the same might no longer be visible to after ages,' — an order dictated, no doubt, by a pious tenderness for national honour, and meant as a charitable covering for the crimes of our fathers. But it was a sin against posterity; it was a treason against society; for instead of being burnt they should have been directed to be blazoned in large upon the walls of our courts of justice, that like the characters deciphered by the prophet of God to the eastern tyrant, they might enlarge and blacken in your sight to terrify you from acts of injustice."

I must refrain from copying more than a few sentences of the peroration: "My firmest wish is that we may not conjure up a spirit to destroy ourselves, nor set the example here of what in another country we deplore. Let us cherish the old and venerable laws of our forefathers. Let our judicial administration be strict and pure: and let the jury of the land preserve the life of a fellow-subject, who only asks it from them on the same terms under which they hold their own lives, and all that is dear to them and their posterity for ever. Let me repeat the wish with which I began my address to you, and which proceeds from the very bottom of my heart; may it please God, who is the author of all mercies to mankind, whose providence I am persuaded guides and superintends the transactions of the world, and whose

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guardian spirit has ever hovered over this prosperous island, to direct and fortify your judgments! I am aware I have not acquitted myself to the unfortunate man who has put his trust in me in the manner I could have wished; — yet I am unable to proceed any farther — exhausted in spirit and in strength — but confident in the expectation of justice."

It is said that from his extraordinary exertions he had become quite hoarse, and that for ten minutes before he sat down, leaning for support on the table, he could only whisper to the jury; but that so intense was the stillness — such breathless eagerness was there to catch every syllable which fell from him — his faint accents were heard in the remotest corner of the court, and produced a deeper effect than was ever witnessed from tones the most powerful and mellifluous.

Applause on the conclusion of his speech, and his handsome conduct to his opponents.

As soon as he had concluded, an irresistible acclamation pervaded the court, and was repeated to an immense distance around. The streets seemed to be filled with the whole population of London, and it was for some time impossible for the Judges to get to their carriages. Erskine, thereupon making a noble and triumphant use of his popularity, went out and addressed the multitude, desiring them to confide in the justice of the country — reminding them that the only security of Englishmen was under the inestimable laws of England, and that any attempt to overawe or bias them would not only be an affront to public justice, but would endanger the lives of the accused. He then besought them to retire, — and in a few minutes there was no one to be seen within half a mile of the court except a casual passer by, unconscious of what had happened, or a drowsy watchman on his round, — according to ancient custom, announcing the hour of the night, and the state of the weather.

Acquittal of Hardy.

The result of this memorable trial is well known. After important evidence as to the objects of the societies and the loyal and peaceable character of the prisoner, — an argumentative and able address from Sir Vicary Gibbs, — a very lengthy reply from Lord Redesdale, then Solicitor General, — and an unexceptionable summing up from Chief Justice Eyre, the

jury found a verdict of NOT GUILTY,—which gave rise to rapturous rejoicings among the reformers, and was received with satisfaction by the judicious of all parties.

Trial of John Horne Tooke.

I am wholly at a loss to account for the infatuated obstinacy which was now exhibited. The almost invariable practice has been, that after an acquittal of the first man tried of several jointly charged with high treason, the prosecution has been abandoned as to the others; and one would have thought that here the Government would eagerly have withdrawn from an attempt which had been so unfortunate, and which was so universally condemned. Yet, to the amazement of the public, it was announced that another prisoner was to be tried on the same charge and the same evidence, and that this prisoner was JOHN HORNE TOOKE, a man popular by his agreeable manners, admired for his literary acquirements, who had ever conducted himself with caution and discretion; known to be aristocratic in his inclinations, although he was a demagogue; and for assailing and annoying antagonists in a forensic proceeding having proved himself to have unrivalled powers*,—which were sure to be called in aid to follow up the destructive onslaught of Erskine, now flushed with victory.

Demeanour of the prisoner.

Yes! John Horne Tooke, with a constitution broken by age and disease, but a mind as alert and youthful as when he wrote against Junius, and spoke against Thurlow, was next called upon to hold up his hand at the bar of the Old Bailey, and having heard the jargon of the indictment read, was asked how he would be tried? Although perfectly confident of an acquittal, he gave a foretaste of what might be expected during the trial, by putting on the aspect of a man weighed down by his oppressors, by looking round the court some seconds with an air of significant meaning, which few assumed better, and by answering, while he emphatically shook his head, "I would be tried by God and my country! But"——

* *E. g.* He had been his own counsel in the action brought against him by Mr. Fox for the expenses of the Westminster election petition, and thus began his address to the jury: "Gentlemen, there are here three parties to be considered — YOU, *Mr. Fox*, and *myself*. As for the *Judge* and the *crier*, they are sent here to preserve order, and they are both well paid for their trouble."

Here he paused, having intimated with sufficient distinctness that he feared much he should not have this advantage.

An application having been made that, on account of his infirmities, he might be permitted to sit by his counsel, he was told that "this *indulgence* should be shown him." Instead of humbly thanking the Judge in whose hands he was, and who was by and by to direct the jury on the question of his life or death, he observed, in a very quiet familiar tone, "I cannot help saying, my Lord, that if I were a Judge, that word '*indulgence*' should never issue from my lips. My Lord, you have no indulgence to show; you are bound to be just; and to be just is, to do that which is ordered."

Once seated at the table with the counsel, he was the most facetious and light-hearted of mortals, and seemed to have as much enjoyment in the proceeding as a young advocate who has unexpectedly got a brief with a good fee in a winning cause, which has excited great interest, and by which he expects to make his fortune. "Cool and prompt, ready at repartee and fond of notoriety, he trod the boards of the Old Bailey like some amateur actor pleased with his part, and resolved to make the most of it, even though the catastrophe should terminate in his death. After the acquittal of Hardy the reverend agitator would have deprecated his not being brought to trial as a personal misfortune. It is impossible to read this grave state prosecution without frequently indulging in an involuntary smile. From the constant merriment which rewarded his sallies, it might be guessed that a madder wag never stood at the bar; and yet he rarely laughed himself, but glanced around, from his keen and arch eyes, a satirical look of triumph."* To the credit of Erskine be it stated, that he was not at all annoyed by the sallies of his client, although they were sometimes unseasonable, nor jealous of the *éclat* which they brought him; but, on the contrary, encouraged him to interpose, and rejoiced in the success of his hits. While the evidence for the prosecution was going on, he seemed content with the office of being second to one so perfect in the art of forensic duelling.

* Townsend's Twelve Eminent Judges, ii. 24.

I may mention one or two of the quips of Horne Tooke, which Erskine applauded.

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Facetiæ of John Horne Tooke, during his trial for high treason.

Passages being read from pamphlets published by the Societies, abusing the King and the Lords, he offered to prove that much abuse of himself had been printed on *earthenware vessels*. — A witness having said that a treasonable song had been sung at a public meeting, he proposed that it should be sung in court, so that the jury might ascertain whether there was any thing treasonable, resembling *Ca ira* or the Marseillois Hymn, in the tune. — He not unfrequently succeeded in arguing questions of evidence, and if found out to be clearly wrong, he took a pinch of snuff, and quietly apologised, by saying, that "he was only a student of forty years' standing." — On one occasion, when he objected to the admissibility of evidence of a particular fact, on the ground that he was not connected with it, Eyre reminded him, that if there were two or three links to make a chain, they must go to one first, and then to another, and see whether the chain was made. *Horne Tooke.* "I beg your pardon, my Lord, but is not a chain composed of links? and may I not disjoin each link? and do I not thereby destroy the chain?" — *Eyre, C.J.* "I rather think not till the links are put together, and form the chain." — *Horne Tooke.* "Nay, my Lord, with great submission to your Lordship, I rather think that I may, because it is my business to prevent the forming of that chain." — To prove him to be a republican, evidence was given that a society, of which he was a member, had approved of certain proceedings in the National Assembly. "Egad," said he, "it is lucky we did not say there were some good things in the Koran, or we should have been charged to be Mahometans." — Having put questions to show that at public meetings they had often disapproved of his sentiments and his conduct, he gave a knowing nod to the jury, and said, "My object, gentlemen, was to show that after I had deposed our Lord the King, I was likely to have very troublesome subjects, for I was constantly received with hisses." — By putting the following question, he excited a roar of laughter against the solemn and empty Beaufoy, who pre-

tended hardly to know him, and denied all recollection of a date to which he was interrogated: "Now, witness, upon your oath, was it not the very day that you complained so bitterly to me you could not sleep because, notwithstanding all your services to Mr. Pitt, and all the money you had spent in his cause, he had refused to return your bow?" Few were aware at the time that this was pure invention, to expose a tuft-hunter.—The Attorney General, in repelling some insinuations thrown out against him for the manner in which he had instituted these prosecutions, said, "he could endure any thing but an attack on his *good name;* it was the *little patrimony* he had to leave to his children, and, with God's help, he would leave it unimpaired." He then burst into tears, which, from his lachrymose habit, surprised no one; but, to the wonder of all, the Solicitor General, not known to be of the melting mood, became equally affected, and sobbed in concert with his friend. Tooke, afraid that the sympathy might extend to the jury, exclaimed, in a stage whisper, "Do you know what Sir John Mitford is crying about? He is thinking of the destitute condition of Sir John Scott's children, and the *little patrimony* they are likely to divide among them."

Erskine's address to the jury in his behalf.

When the time arrived for the prisoner's counsel addressing the jury, Erskine was again the observed of all observers, and almost surpassed his performance in defending Hardy. On that occasion, notwithstanding his assumed boldness, he evidently entertained great apprehensions as to the result. He could now even venture to be jocular. In commenting upon the authorities cited by the Attorney General, he said, "To give the case of Lord Lovat any bearing upon the present, you must first prove that our design was to arm, and I shall then admit the argument and the conclusion. But has such proof been given on the present trial? It has not been attempted; the abortive evidence of arms has been abandoned. Even the solitary pike that formerly glared rebellion from the corner of the court no longer makes its appearance, and the knives have returned to their ancient office of carving. Happy was it indeed for me that they

were ever produced; for so perfectly common were they throughout all England, and so notoriously in use for the most ordinary purposes, that public justice and benevolence, shocked at the perversion of truth in the evidence concerning them, kept pouring them in upon me from all quarters. The box before me is half full of them; and if all other trades fail me, I might now set up a cutler's shop."

Thus he pointed out the improbability of the charge against the aged philologist: "Yet this gentleman, greatly advanced in years and broken in health, who was shut up then and long before within the compass of his house and garden at Wimbledon, where he used to wish an act of parliament might confine him for life, who was painfully devoting the greatest portion of his time to the advancement of learning, who was absorbed in researches which will hereafter astound the world — who was at that very moment engaged in a work such as the labour of man hardly ever undertook, nor perhaps his ingenuity ever accomplished — who never saw the Constitutional Society but in the courtesy of a few short moments after dining with some of the most respectable members, and who positively objected to the very measure which is the whole foundation of this prosecution — is yet gravely considered to be the master-spirit which was continually directing all the movements of a conspiracy as extensive as the island — the planner of a revolution in the government, and the active head of an armed rebellion. Gentlemen, is this a proposition to be submitted to the judgment of honest and enlightened men upon a trial of life and death! Why there is nothing in the *Arabian Nights* or in the Tales of the Fairies which is not dull matter of fact compared with it. . . . . Filled with indignation that an innocent man should be consigned to a prison for treading in the very steps which had conducted the premier to his present situation, Mr. Horne Tooke did write 'that if ever that man should be brought to trial for his desertion of the cause of parliamentary reform, he hoped the country would not consent to send him to Botany Bay;' but whatever you

may think of this sentiment, Mr. Tooke is not indicted for compassing and imagining the death of William Pitt."

In combating the unfair course of inferring that every opinion in a book is adopted by him who praises the author, he pointed out that a work of Mr. Burke contained a dangerous principle destructive of British liberty, and thus proceeded: "What then? Ought I to seek its suppression? Ought I to pronounce him to be a criminal who promotes its circulation? On the contrary, I shall take care to put it into the hands of those whose principles are left to my formation. I shall take care that they have the advantage of doing, in the regular progression of youthful study, what I have done even in the short intervals of laborious life;— that they shall transcribe with their own hands, from all the works of this most extraordinary person, the soundest truths of religion — the justest principles of morals, inculcated and rendered delightful by the most sublime eloquence — the highest reach of philosophy brought down to the level of common minds — the most enlightened observations on history, and the most copious collection of useful maxims from the experience of life. All this they shall do, and separate *for themselves* the good from the evil — taking the one as far more than a counterpoise for the other." *

The case against Horne Tooke rested chiefly upon the following letter found in his possession addressed to him by Joyce, one of the alleged conspirators: "Dear Citizen,— This morning at six o'clock Citizen Hardy was taken away by order from the Secretary of State's office: they seized every thing they could lay hands on. *Query.— Is it possible to get ready by Thursday?*" The conclusive proof of rebellion was thus disposed of by Erskine: "This letter, being intercepted, was packed into the green box, and reserved to establish the plot. It is another lesson of caution against vague suspicions. Mr. Tooke having undertaken to collect from the Court Calendar a list of the titles, offices, and

* The Right Hon. T. Erskine, in reference to this passage, writes to me,— "This resolution he put in practice by giving us, as boys, passages from Burke's works to transcribe and learn by heart."

pensions bestowed by Mr. Pitt on his relations, friends, and dependents, and being too correct to come out with a work of that magnitude and extent upon a short notice, had fixed no time for it — which induced Mr. Joyce, who was anxious for its publication, to ask if he could be ready with it by Thursday — using the French designation of '*citizen*' for the purpose of turning it into ridicule!"

So confident had he become, that he even ventured to treat with some severity a juryman who appeared to disapprove of his argument: "To expose further the extreme absurdity of this accusation, if it be possible further to expose it, let me imagine that we are again at peace with France, while the other nations who are now our allies should continue to prosecute the war, — would it *then* be criminal to congratulate France upon her successes against them? When that time arrives, might I not honestly wish the triumph of the French armies? And might I not lawfully express that wish? I know certainly that I might — and I know also that I would! *I observe that this sentiment seems a bold one;* but who is prepared to tell me that I shall not? I WILL assert the freedom of an Englishman; I WILL maintain the dignity of man. I WILL vindicate and glory in the principles which raised this country to her pre-eminence among the nations of the earth; and as she shone the bright star of the morning to shed the light of liberty upon nations which now enjoy it, so may she continue in her radiant sphere to revive the ancient privileges of the world, which have been lost, and still to bring them forward to tongues and people who have never yet known them, in the mysterious progression of things."

Instead of an impassioned peroration, he now merely said, as if he considered the battle won, — "I cannot conclude without observing that the conduct of this abused and unfortunate gentleman throughout the whole of this trial has certainly entitled him to admiration and respect. I had undoubtedly prepared myself to conduct his cause in a manner totally different from that which I have pursued. It was my purpose to have selected those parts of the evidence only by

which he was affected, and to have separated him from the rest. By such a course I could have steered his vessel safely through all perils, and brought her without damage into a harbour of safety, while the other unfortunate prisoners were left to ride out this awful tempest. But he would not suffer his defence to be put upon the footing which discretion would have suggested. Though not implicated in the supposed conspiracy, he has charged me to waste and destroy my strength to prove that no such guilt can be brought home to others. I rejoice in having been made the humble instrument of so much good — my heart was never so much in any cause."

Pitt examined as a witness for Horne Tooke.

When the evidence came to be adduced, he strenuously assisted Mr. Tooke in examining the witnesses, and particularly in trying to refresh the memory of Mr. Pitt respecting a meeting of delegates, at which the young patriot had been present previous to one of his motions for parliamentary reform, but could extract no answer from him except that he *did not recollect.* The Minister evidently quailed under the discipline of his former associate, and of the man whom in the House of Commons he had treated with such contempt. Indeed, this was the most humiliating passage of his whole life — and the recollection of it must have been painful to him amidst all his subsequent triumphs over political foes.*

Acquittal of Horne Tooke.

Although Hardy's jury had deliberated several hours, Horne Tooke was acquitted as soon as the Judge had concluded the summing up — when he gracefully returned thanks to the Bench and the jury for the fair trial which had ended so auspiciously, and above all for the noble exertions of his counsel, who had done such effectual service to public liberty.

Trial and acquittal of Thelwall.

Still the Government was not satisfied, and a third prisoner, Thelwall, was put upon his trial. They would have had a better chance of a conviction if they had begun with him, as

* It is curious that after the examination of Sheridan, Pitt voluntarily declared that he *did* recollect a meeting at the Duke of Richmond's, at which were present delegates from different county meetings, and from several cities and towns. At this moment he must have wished that he had been true to the cause of Parliamentary Reform, instead of grasping supreme power in the state.

he had taken a much more active part in the societies than either of the other two. The effort now was, to shorten the case for the prosecution, and it ended early on the third day. Erskine expressed some embarrassment at being so unexpectedly called upon to enter on the defence, but he executed the task with his never-failing ability and energy.* I must content myself with giving one passage from it, in which he tried to take off the effect of most intemperate words against the Government imputed to the prisoner by a spy. After attacking the credibility of the witness, he thus proceeded:— "Even if the very phrase had not been exaggerated, if the particular sentence had not been coloured or distorted, what allowance ought there not to be made for infirmity of temper, and the faults of the tongue, in a period of intense excitement. Let me ask, who would be safe, if every loose word, if every vague expression, uttered in the moment of inadvertence or irritation, were to be admitted as sufficient evidence of a criminal purpose of the most atrocious nature? In the judgment of God we should, indeed, be safe, because he knows the heart — he knows the infirmities with which he hath clothed us, and makes allowance for those errors which arise from the imperfect state of our nature. From that perfect acquaintance which he possesses with our frame, he is qualified to regard in their proper point of view the involuntary errors of the misguided mind, and the intemperate effusions of the honest heart. With respect to these, in the words of a beautiful moral writer, 'the accusing angel, who flies up to Heaven's chancery, blushes as he gives them in, and the recording angel, as he writes them down, drops a tear upon the words and blots them out for ever.' Who is there that in the moment of levity or of passion has not adopted the language of profaneness, and even trifled with the name of the God whom he adores? Who has not, in an unguarded hour, from a strong sense of abuse, or a quick resentment

* It is said that Thelwall was a very troublesome client, and frequently interfered indiscreetly in the defence. At one time he was so much dissatisfied, that he wrote on a piece of paper, which he threw to Erskine, "I'll be hanged if I don't plead my own cause;" upon which his counsel returned for answer, "You'll be hanged if you do."

of public misconduct, inveighed against the Government to which he is most firmly attached? Who has not, under the impulse of peevishness and misapprehension, made use of harsh and unkind expressions, even with respect to his best and dearest relations — expressions which, if they were supposed to proceed from the heart, would destroy all the affection and confidence of private life? If there is such a man present so uniformly correct in expression, so guarded from mistake, so superior to passion, let him stand forth, let him claim all the praise due to a character so superior to the common state of humanity. For myself, I will only say, *I am not the man.*" — The Jury found a verdict of NOT GUILTY.

At last the Attorney General said he should proceed no farther, and all the other prisoners were acquitted without any evidence being offered against them.

Folly of these prosecutions.

Even Adolphus, the zealous advocate of all the measures of Mr. Pitt's Administration which can be praised or excused, is obliged to say, "Considering calmly these prosecutions, they appear in every point of view to have been unfortunate, not to say unwise. . . . . It was desirable to frustrate the schemes of desperate innovators; but the British public, who had ever been accustomed to meet, to associate, to proclaim their political opinions and predilections, to devise means and to recommend measures for removal of their grievances, and improvement of their social condition, viewed with anxiety and alarm those measures which tended to plunge individuals into the dreadful gulf of high treason, when they had unintentionally, perhaps, exceeded the bounds which an exact knowledge of the laws and a timid prudence would have prescribed." *

Public gratitude to Erskine.

There were strong manifestations of the public gratitude for the services which Erskine had rendered in saving the country from the peril with which it had been threatened. On the last night of the trials his horses were taken from his chariot, — amidst bonfires and blazing flambeaux, he was drawn home by the huzzaing populace to his house in Serjeants' Inn, — and they obeyed his injunction, when, addressing them

* Vol. vi. 71.

from a window, with Gibbs by his side, he said,—"Injured innocence still obtains protection from a British jury, and I am sure, in the honest effusions of your hearts, you will retire in peace and bless God."* The freedom of many corporations was voted to him, and his portraits and busts were sold in thousands all over Great Britain. What was more gratifying, his speeches for the prisoners were read and applauded by all men of taste, his political consequence was much enhanced with his party, and he had full revenge for the sarcasms of Pitt. He now occupied a position as an advocate which no man before had reached, and which no man hereafter is ever likely to reach at the English Bar.

A peep at Erskine in private life.

It is delightful to find the same individual a few weeks after thus writing to a friend:—"I am now very busy flying my boy's kite, shooting with the bow and arrow, and talking to an old Scotch gardener ten hours a-day, about the same things, which, taken altogether, are not of the value or importance of a Birmingham halfpenny, and am scarcely up to the exertion of reading the daily papers. How much happier it would be for England and the world if the King's Ministers were employed in a course so much more innocent than theirs, and *so perfectly suitable to their capacities!*"†

* When he used to boast of this ovation, some of his friends sought to mortify him by asserting (I know not with what truth) that the patriots, who took his horses from his carriage, *forgot to return them to him.*

† Letter to Dr. Parr.

CHAPTER CLXXXI.

CONTINUATION OF THE LIFE OF LORD ERSKINE TILL THE TRIAL OF HADFIELD FOR SHOOTING AT GEORGE III.

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Jan. 5. 1795. Erskine's improved position in the House of Commons.

His censure of the Government prosecutions.

WHEN the victorious advocate again spoke in the House of Commons, his reception there was much more flattering than any he had previously experienced. The occasion was a motion for a repeal of the "Habeas Corpus Suspension Act," when he went through the history of the late State Trials,—contending that they proved "a conspiracy to alarm the country, and to deceive Parliament." Having stated the opinion of the Judge against the objection that the prisoners were not privy to the plans of the obnoxious societies, he proceeded:—"The Judge said true: we forbore to urge it, because we knew that it was not tenable ground, though we were firmly convinced that the defence was invulnerable in point of law, not only by the statute but even by all the authorities; yet we did not expect that the jury would prefer our statement as advocates to the judgment of the Court, whether well or ill-founded; but we looked to the great sheet-anchor of the cause—the gross falsehood and absurdity of the supposed conspiracy. On that we relied, and on that we prevailed." Thus he concluded:—"If the threat of invasion is carried into effect, who is to defend the country? Who, but this insulted people, whom you calumniate? The people only can do it, and they will do it only as they feel an interest worth the exertion. Let the Chancellor of the Exchequer attend to the maxim happily expressed by the poet, and no less happily applied by his great father to the case of alienated America:—

'Be to their virtues very kind,
Be to their faults a little blind;
Let all their ways be unconfin'd,
And clap a padlock on their mind.'"*

* 31 Parl. Hist. 1087. 1177.

In a very violent speech which he made against the Seditious Meetings Bill, he resorted to an oath as in Lord George Gordon's case, but not with the same success: "If the Government resolve to rob the people of their rights, the people will be justified in resisting such glaring oppression. I will say again and again, that it is the right of the people to resist a Government which exercises tyranny. It is certainly bold to say that the people have a right to resist, and that they ought to rise; but there are some occasions which render the boldest language warrantable. '*If* the King's servants,' said Lord Chatham, 'will not permit a constitutional question to be decided according to the forms and on the principles of the Constitution, it must then be decided in some other manner; and rather than it should be given up — rather than that the nation should surrender their birthright to a despotic Minister, I hope, my Lords, old as I am, I shall see the question brought to issue, and fairly tried between the people and the Government!' Sanctioned by the sentiments of that venerable and illustrious man, I maintain that the people of England should defend their rights, if necessary, by the last extremity to which freemen can resort. For my own part, I shall never cease to struggle in support of liberty. In no situation will I desert the cause. I was born a freeman, and, BY GOD, I will never die a slave!" *

Nov. 17. 1795. His unsuccessful oath in the House of Commons.

One of the best speeches he ever delivered in Parliament was against the bill for making "a conspiracy to levy war" HIGH TREASON, — without any overt act which could be considered a levying of war. He here gives a most admirable exposition of the statute of Edward III., showing the wisdom of the distinction between "a conspiracy to levy war" and "a conspiracy against the life of the Sovereign;" — illustrating from English history the evils produced by departing from that statute and tyrannically creating the new treasons which had all been repealed in better times. I would earnestly implore statesmen to read and to ponder his arguments before proposing to repress crimes against the state by severer

Nov. 30. 1795. His speech against the extension of the treason laws.

* 32 Parl. Hist. 310.

penal laws. But happily, in the present generation, such admonitions are little wanted, and I am delighted to think that I can freely stand up for constitutional maxims without incurring any suspicion of reflecting on political opponents: whatever questions may still divide existing parties, I believe that, from the improved spirit of the age, we are all equally united in the conviction that the governors should respect the Constitution to make it be respected by the governed. Of the passionate declamation which Erskine mixed up with his reasoning the reader may form an opinion from the following specimen: — "I have no right to ask a Royal audience, but I declare that I feel a strong inclination to rush into the closet of my Sovereign, forgetful of the usual forms of decorum, and to implore him upon my knees to withhold his assent from a bill which goes to destroy his throne in the hearts of his subjects, and to invest him with the insignia of a tyrant. I cannot believe that his Majesty, convinced as he must necessarily be of the loyalty and attachment of his people, will ever give his approbation to a law which, under the pretext of providing for his safety, contains a gross and unfounded libel on the character of his subjects. When it pleased God to remove from the Sovereign the hand of affliction, what demonstrations of loyalty and affection appeared in the metropolis, as his Majesty passed to St. Paul's to give thanks to Heaven for his deliverance! The nation appeared one great family rejoicing at the recovery of their common father. And notwithstanding all this tumult of congratulatory joy, notwithstanding that banquet of affection, on which it is the fortune of the present Monarch daily to regale, his Ministers would inspire him with jealousy and distrust. An alarm is sounded throughout the kingdom, and spies and informers echo back the cry. Whence the framers of the bill borrowed the enactment against 'expressing, publishing, uttering, or declaring any words or sentences to incite or stir up the people,' I cannot conceive. After this, a sigh or a groan may be construed into treason. I have in vain searched for it in the history of former tyrannies, and I

can only suppose it to have been suggested by the description of the poet: —

> 'In the vaulted roof
> The tyrant sat, and through a secret channel
> Collected every sound; heard each complaint
> Of martyr'd virtue; kept a register
> Of sighs and groans, by cruelty extorted;
> Noted the honest language of the heart;
> Then on the victims wreak'd his murd'rous rage,
> For yielding to the feelings of their nature.'

"The annals of Britain do not furnish an instance in which the statute of Edward III., the *statutum benedictum*, as it is emphatically called, has not accomplished all that law can accomplish to protect the King and his Government; but the present bill wantonly creates new and undefined treasons, disorganises the system of our jurisprudence, and by sanctioning grievous and vexatious measures, will excite disaffection and engender discord."*

Dec. 1795. Foolish prosecution instigated by Erskine and the Whigs, for a supposed breach of the privileges of the House of Commons.

While this bill was pending, a controversy arose in which, I am sorry to say, Erskine and the Whig Opposition appeared to little advantage, — nay, to speak the whole truth, — most inconsistently, grossly and flagrantly violated the principles of free discussion which they had been so loudly contending for. Mr. John Reeves, president of the "Society against Republicans and Levellers," — a gentleman of some literary distinction, — had published a somewhat silly, but a very harmless book, entitled, "Thoughts on the English Government," in which was to be found this passage: "The government of England is a monarchy; the monarchy is the ancient stock from which have sprung those goodly branches of the legislature, — the Lords and Commons, that at the same time give ornament to the tree, and afford shelter to those who seek protection under it. But these are still branches, and derive their origin and their nutriment from their common parent; they may be lopped off, and the tree is a tree still; — shorn indeed of its honours, but not, like them, cast into the fire. The kingly government may go on in all its functions, without Lords or Commons; it has heretofore done so for years to-

* 32 Parl. Hist. 470.

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gether, and in our times it does so during every recess of Parliament; but without the King his Parliament is no more." I blush while I relate that the defender of Stockdale, of Hardy, and of Horne Tooke, — while still meditating his purpose of rushing into the King's presence, to implore, upon his bended knees, that the royal assent should be withheld from a bill to fetter free inquiry into political subjects, zealously and effectually supported a resolution, that this book was "a breach of the privileges of the House of Commons, and that the Attorney General should be directed to prosecute the author for a libel," — saying, "What a glorious representative of the people of England would that House appear to be, if they passed by the pamphlet which had been read to them that night, in which they were represented as a mere council for the Crown, and that in this consisted their greatest utility, — that all the vigour they were supposed to have, as an emanation from the people, was a mere chimera. If they voted that this was no libel, the public would see that they did so because it was in favour of the Crown against the rights of the people; and he was quite sure, that if the Attorney General called for the verdict of a jury upon it, they will not require that time to deliberate upon it, which members opposite seemed to desire." Mr. Pitt and his colleagues very sensibly and laudably tried to keep the House out of the scrape into which they were rushing, and succeeded so far as to have the matter referred to a Committee of Privileges: but after two reports from the Committee, the motion for a prosecution, being supported by Mr. Fox, Mr. Sheridan, and Mr. Grey, was carried, without a division.

May 20. 1796.

Accordingly, a criminal information was filed by the Attorney General, and brought to trial before Lord Kenyon — when the jury, taking a much juster view of the subject than had been anticipated by the champion of the liberty of the press, after an hour's deliberation returned this verdict: — "My Lord, we are of opinion that the pamphlet, which has been proved to have been written by John Reeves, Esq., is a very improper publication, — but we think his motives not such as are alleged in the information, and therefore we find him

NOT GUILTY."* So end all such House of Commons' prosecutions!!! I hope that, as a punishment for this hallucination, Erskine was present when Plumer, who was counsel for the defence, spoke with much applause, and that he heard the shouts of rejoicing with which the verdict was received.†

Dec. 30. 1796. Erskine "breaks down" in attempting to answer Pitt.

Whether ashamed to show himself in the House of Commons, the fact is, that the next time Erskine rose to take a part in debate, — notwithstanding all his experience and all his success, he "broke down" soon after he began to address the House. The occasion was rather a formidable one. After the rupture of the negotiation for peace with the French republic, Pitt, in one of the most splendid orations he ever delivered, took a comprehensive and masterly view of our foreign affairs, and moved an address to the King recommending a vigorous prosecution of the war. The defeated prosecutor for libel immediately followed, with the intention of answering him, and moving an amendment; but when he was observing that "France had formerly offered terms, the obtaining of which now would make the right honourable gentleman be worshipped as a God," — he became confused, and after a pause sat down. Fox instantly rushed in to the rescue, — thus beginning: "Sorry, indeed, am I on account of my honourable and learned friend, whose indisposition has suddenly compelled him to resume his seat; sorry for the sake of the House, whose information, from the train of argument he had adopted, has been thus unpleasantly interrupted, and sorry for the cause which would have had such an advocate — sorry for the sake of England, which Ministers, by their imprudent councils and infatuated policy, seem determined to push to the last verge of ruin, — that I am thus so unexpectedly called upon to address the House. I feel it, however, incumbent on me to step forward, knowing that my opinion on the subject entirely coincides with that of my honourable and learned friend —

* 32 Parl. Hist. 610. 620. 634. 680.

† Quivedo, the Spanish poet, says that the punishment of fiddlers in hell will be to stand by and listen while other fiddlers play.

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but lamenting that the arguments on this momentous question must considerably suffer from the want of that ability with which he would have enforced them." He then went on so as to make Erskine's failure soon forgotten, and once more to divide the opinion of impartial judges whether the palm of oratory should be awarded to him or to his adversary.*

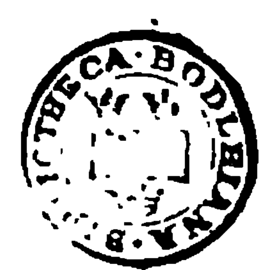
Erskine secedes from the House of Commons.

For several years afterwards, Erskine very rarely spoke, or even attended the House. The policy which he condemned was not only triumphant in Parliament, but was approved by the great bulk of the nation; and he said that he saved himself for more auspicious times. He joined Fox and the other principal Whig leaders in their ill-judged secession from Parliament.

His pamphlet "On the Causes and Consequences of the War."

In this interval he published a pamphlet, entitled "A View of the Causes and Consequences of the present War with France," which was so popular, that it was said to have run through thirty-seven editions. However, I cannot say that it adds much to his permanent fame. It contains some forcible passages, but it deals in common-places, and the style is careless. Having received some gentle hints on this subject from his friend Dr. Parr, he replied: "I cannot say how much I thank you for remarking the negligence with which it cannot but be filled. I wonder it is not nonsense from beginning to end, for I wrote it amidst constant interruption, great part of it in open court, during the trial of causes. Fifteen thousand copies have been sold in England, besides editions printed at Dublin and Edinburgh, where the sale has been unusual." The most amusing part of it is the history of the Prime Minister, as connected with parliamentary reform, which thus begins: "Towards the close of the American war, Mr. Pitt (a boy almost) saw the corrupt condition of Parliament, from the defect of the representation of the people, with the eyes of a mature statesman: the eagle eyes of his father had seen it before him, and the thunder of his eloquence had made it tremble. Lord Chatham had detected and exposed the rank corruption of the House of

* 32 Parl. Hist. 1464.



Commons, as the sole cause of that fatal quarrel, and left it as a legacy to his son to avenge and to correct them. The youthful exertions of Mr. Pitt were worthy of the delegation. From my acquaintance with him, both before and after his first entrance into public life, I have no doubt of his perfect sincerity in the cause he then undertook; and the maturity of his judgment, even at that time, with which I was well acquainted, secures his conduct from the rashness of unthinking youth." He then traces him to his fall from virtue, and the degradation he reached when he became the accuser of his old friends. This made Pitt very indignant, and he several times alluded to the pamphlet with bitter scorn.

May 26. 1797. His exposure of the inconsistency of Pitt.

Erskine's next appearance in the House, was in seconding Mr. Grey's annual motion for a reform in Parliament. He now, in a very long speech, reiterated all his former arguments, and thus again showed his enmity to the Premier: "The right honourable gentleman, not contented with apostatising from the principles which he once professed, has resisted them in a spirit and language of the loftiest pride and arrogance. In his humiliation and disgrace unfortunately this once mighty nation has also been humbled and disgraced. The cause of reform was to be, at all events, put down, and all who maintained it were to be stigmatised, persecuted, and oppressed. Here is the clue to every measure of Government, from the hour of the right honourable gentleman's apostasy to the present. But the insolence with which the hopeful changes of the rising world were denounced within these walls is an awful lesson to mankind. It has taught that there is an arm fighting against the oppressors of freedom, stronger than any arm of flesh, and that the great progressions of the world, in spite of the confederacies of power, and the conspiracies of corruption, move on with a steady pace, and arrive in the end at a happy and glorious consummation." Pitt followed, but on this occasion his sarcasms were dulled by the sense of his own inconsistency, and he made but a feeble opposition to the motion,—objecting to the argument of imprescriptible right by which it had been supported, and relying upon the inflamed

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state of the public mind, which rendered any constitutional change too perilous.*

Feb. 3. 1799.

Reprobating the unfortunate rejection of the overtures of peace by Bonaparte when he became First Consul, Erskine made an excellent speech, and called forth a reply from Pitt, which, although in a bad cause, is one of the finest efforts of his genius.† There was no other great battle between them before the time when Pitt, having seen the ruinous effects of his policy, for a time withdrew from office, that others might negotiate with the victorious General, to whom he had prescribed, as a condition of forgiveness, the restoration of the Bourbons. In the meanwhile Erskine spoke several times on miscellaneous subjects—in favour of the Bill for making adultery an indictable offence ‡, and the Bill for checking the institution of monastic societies in this country §; and against the Bill for preventing ordained clergymen from sitting in the House of Commons.‖ On all these subjects he spoke very sensibly, without saying any thing very brilliant.

Prosecution of Stone for high treason.

We must now look back to what was passing in the Courts of Law, where his ascendency remained unimpaired. The Government having very properly brought to trial, for high treason, William Stone, a merchant of London, against whom there was strong evidence that he had "adhered to the King's enemies," by inviting an invasion from France, Erskine was his counsel, and conducted the defence with infinite tact and dexterity. There was here no ground to complain of any perversion of the law of treason, or of any attack on public liberty. In a very moderate tone, therefore, he confined himself to an examination of the evidence, contending that it was all consistent with the prisoner's innocence, and observing, that "it was not enough for the Crown to raise so thick a cloud that the jury could not be sure which way to walk, but that a clear light must be shed upon the path leading to conviction, before they could venture to tread it." After long deliberation, there was a verdict of NOT GUILTY.¶

He is defended by Erskine, and acquitted.

* 33 Parl. Hist. 653. † 34 Ib. 1285. ‡ 35 Ib. 309.
§ 35 Ib. 361. ‖ Ib. 1335. 1397. ¶ 25 St. Tr. 1153—1438.

July 26. 1796. Erskine counsel for the Bishop of Bangor, indicted for a riot.

His speech in defence of the Bishop of Bangor, delivered at Shrewsbury, was corrected by him, and published under his sanction; but the occasion did not offer an opportunity for a display of his higher powers as an advocate. The Right Reverend Prelate, along with a body of his clergy, having somewhat irregularly and violently broken into the office of the Registrar for the diocese, and ejected from it a Mr. Grindley, who pretended to be the lawful Registrar, this gentleman indicted them all for a riot and assault. The prosecutor was a very intemperate and wrong-headed person, but the law hardly justified the proceeding of the defendants, and their counsel was evidently under very considerable alarm. I must content myself with introducing the piece of acting, to which he thought he was justified in resorting at the conclusion of his address.

Although he knew that he could not alter the facts by calling witnesses, and he had resolved that none should be called, he observed, "I am instructed, gentlemen, and, indeed, pressed, by the anxiety of the Bishop's friends, to call many witnesses to show that he was by no means disturbed with passion, as has been represented; and that, so far from it, he even repressed those whose zeal for order, and whose affection for his person, prompted them to interfere, saying to them, 'The law will interpose in due season.' I have witnesses, to a great number, whom I am pressed to call before you, who would contradict Mr. Grindley in the most material parts of his testimony; but then I feel the advantage he would derive from this unnecessary course; he would have an opportunity from it to deprive the Right Reverend Prelate of the testimony and protection of your approbation. He would say, no doubt, 'Oh! I made out the case which vindicated my prosecution, though it was afterwards overturned by the testimony of persons in the Bishop's suite, and implicitly devoted to his service: I laid facts before a jury from which a conviction must have followed, and I am not answerable for the false glosses by which *his witnesses have perverted them.*' This would be the language of the prosecutor; and I am therefore extremely anxious that your verdict should

proceed *upon the facts as they now stand before the Court*; and that you should repel with indignation a charge which is defeated by the very evidence that has been given to support it. I cannot, besides, endure the humiliation of fighting with a shadow, and the imprudence of giving importance to what I hold to be *nothing*, by putting *anything* in the scale against it,—a conduct which would amount to a confession that *something* had been proved which demanded an answer. How far those from whom my instructions come may think me warranted in pursuing this course I do not know; but the decision of that question will not rest with either of us, *if your good sense and consciences should, as I am persuaded they will, give an immediate and seasonable sanction to this conclusion of the trial*."

He was in hopes that on this invitation the jury would at once have risen, and, without turning round to deliberate, have said it was unnecessary to proceed farther, and pronounced a verdict of NOT GUILTY; — but they all kept their seats, and maintained a deep silence. Thereupon, considerably disconcerted, he pretended to consult a few minutes with Mr. Plumer, Mr. Leycester, and Mr. Milles, who were counsel along with him for the defendants, and with the attorney who instructed them, — and then, with an assumed air of satisfaction, said, "he was happy to inform the court that his advice was followed, and he should give no evidence."

Mr. Justice Heath summed up for a conviction *, and said to the jury, "Considering that all individuals are to be tried by the law of the land, notwithstanding their high station and the character they may heretofore have maintained, if you believe the prosecutor's witnesses, and think that a case has been made out against the defendants, it will be your duty to find them guilty; but if you have any *reasonable doubt* whether they are guilty or not, you will acquit them." The jury, from a laudable reluctance to send an aged prelate, venerated for his piety and good works, and a number of respectable clergymen of the Church of England, who

* This Judge was supposed generally rather to lean against Erskine: he used to say, "I am always on my guard against these 300 guinea gentry."

had been actuated by a desire of supporting their Diocesan, to stand on the floor of the King's Bench as malefactors, there to receive sentence of fine and imprisonment, had sufficient doubts to induce them to pronounce a verdict of acquittal, and Erskine, after having been some time in a state of painful suspense, — as usual, returned to London victorious. *

Erskine counsel for the prosecution of blasphemy.

We are next to see him in a new capacity — conducting a prosecution for a blasphemous libel. Paine's "Age of Reason," a most scurrilous and insulting attack on the Christian religion, had lately appeared — which rendered the author and publisher liable to severe punishment, leaving only one question for consideration, — whether more mischief was likely to arise to the community from the wider circulation the infamous publication might obtain by the notoriety of a public trial, or from allowing it to pass with entire impunity? The Government abstained from prosecuting, but "The Society for the Suppression of Vice and Immorality" preferred an indictment against a bookseller of the name of Williams, at whose shop it was sold, and retained Erskine for their counsel as prosecutors. I shall give a few extracts from his beautiful address to the jury: — "For my own part, gentlemen, I have been ever deeply devoted to the truths of Christianity; and my firm belief in the Holy Gospel is by no means owing to the prejudices of education (though I was religiously educated by the best of parents), but has arisen from the fullest and most continued reflections of my riper years and understanding. It forms at this moment the great consolation of a life which as a shadow passes away; and without it I should consider my long course of health and prosperity (too long, perhaps, and too uninterrupted to be good for any man) only as the dust which the wind scatters, and rather as a snare than as a blessing." Having read and commented on some of the most obnoxious parts of the book, he continued: "In running the mind over the long list of sincere and devout Christians, I cannot help lamenting that Newton had not lived to this day to have had the dark-

June 24. 1797. His speech on the truth of Christianity.

* Erskine's Speeches, vol. v. 93—168. 26 St. Tr. 463—529.

ness of his understanding illuminated by this new flood of light. But the subject is too awful for irony. I will speak plainly and directly. Newton was a Christian! — Newton, whose mind burst forth from the fetters fastened by nature upon our finite conceptions! — Newton, who carried the line and rule to the uttermost barriers of creation, and explained the principles by which all created matter exists and is held together!" In a similar strain he appealed to the testimony of Boyle, Locke, and Hale, and then introduced a still greater name: "But it is said by the author that the Christian's fable is but the tale of the more ancient superstitions of the world, and may be easily detected by a proper understanding of the mythologies of the Heathens. Did Milton understand these mythologies? Was HE less versed than Mr. Paine in the superstitions of the world? No! they were the subjects of his immortal song, and he poured them forth from the stores of a memory rich with all that man ever knew, and laid them in their order as the illustration of real and exalted faith — the unquestionable source of that fervid genius which has cast a shade on the other works of man: —

> 'He pass'd the flaming bounds of place and time,
> The living throne, the sapphire blaze,
> Where angels tremble while they gaze.
> He saw — but, blasted with excess of light,
> Closed his eyes in endless night.'

"But it was the light of the body only which was extinguished. The celestial light shone inward, and enabled him to '*justify the ways of God to man.*'"—He does not conclude without a tribute to the benefits of free and enlightened discussion: — "I do not dread the reasonings of Deists against the existence of Christianity itself, because as was said by its divine author, '*if it be of God, it will stand.*' — An intellectual book, however erroneous, addressed to the intellectual world, upon so profound and complicated a subject, can never work the mischief which this indictment is calculated to repress. Such works will only incite the minds of men, cultivated by study, to a closer investigation of a subject well worthy of their deepest and continued contemplation. The changes

produced by such reciprocations of lights and intelligences are certain in their progression, and make their way imperceptibly by the final and irresistible power of truth. If Christianity be founded in falsehood, let us become Deists in this manner, and I am contented. But this book has no such object, and no such capacity: it presents no arguments to the wise and the educated; on the contrary, it treats the faith and opinions held sacred by the British people, with scoffing and ribaldry, and tends to make the thoughtless multitude view with contempt the obligations of law and the precepts of morality."

A Mr. Stewart Kid, counsel for the defendant, having, without the authority of his client, delivered a most indecent address to the jury, defending the sentiments and the language of "The Age of Reason," Erskine, in reply, entered at considerable length into the evidences of the Christian religion. He asked, "Is there a person of the least knowledge who suffers himself to doubt that in the most comprehensive meaning of Scripture, the prophecy of its universal reception is fast fulfilling, and certainly must be fulfilled? For my own part, gentlemen of the jury, I have no difficulty in saying to you, not as counsel in this cause, *but speaking, upon my honour, for myself,* (and I claim to be considered as an equal authority, at least, to Mr. Paine, on the evidence which ought to establish any truth,) that the universal dispersion of the Jews throughout the world, their unexampled sufferings, and their invariably distinguished characteristics, when compared with the histories of all other nations, and with the most ancient predictions of their own lawgivers and prophets concerning them, would be amply sufficient to support the truths of the Christian religion, if every other record and testimony on which they stand had irrecoverably perished." *

* Erskine's declaration was soon after referred to from the pulpit by a right reverend prelate: "In our own times, more particularly, a man of distinguished talents and acknowledged eminence in his profession, and in the constant habit of weighing, sifting, and scrutinising evidence with the minutest accuracy in courts of justice, has publicly declared that he considered this prophecy, if there were nothing else to support Christianity, as *absolutely irresistible.*"—*Lectures by Porteus, Bishop of London,* vol. ii. 212. 10th edit.

In a letter from Erskine, now lying before me, in reference to this prosecu-

The jury instantly found a verdict of GUILTY.

His quarrel with the Society for the Suppression of Vice.

In the ensuing term, Erskine moved for judgment, and the defendant was committed to gaol, while the Judges considered what sentence they should pronounce. In the mean time, the learned counsel saw reason to decline being longer concerned for the "Society," and returned their retainer. A statement of the circumstances which induced him to adopt this unusual step, he communicated many years afterwards in an interesting letter to the Editor of the "State Trials:"—

Feb. 7. 1819.

"Having convicted Williams, as will appear by your report of his trial, and before he had notice to attend the Court to receive judgment, I happened to pass one day through the Old Turnstile, from Holborn, in my way to Lincoln's Inn Fields, when in the narrowest part of it I felt something pulling me by the coat: on turning round, I saw a woman at my feet bathed in tears, and emaciated with disease and sorrow, who continued almost to drag me into a miserable hovel in the passage, where I found she was attending upon two or three unhappy children in the confluent small-pox, and in the same apartment, not above ten or twelve feet square, the wretched man whom I had convicted was sewing up little religious tracts, which had been his principal employment in his trade; and I was fully convinced that his poverty, and not his will, had led to the publication of this infamous book, as, without any kind of stipulation for mercy on my part, he voluntarily and eagerly engaged to find out all the copies in circulation, and to bring them to me to be destroyed. I was most deeply affected with what I had seen; and feeling the strongest impression that he offered a happy opportunity to the prosecutors of vindicating, and rendering universally popular, the cause in which they had succeeded, I wrote my opinion to that effect, observing (if I well remember), that mercy being the grand characteristic of the

tion, he says, — "My opening speech, correctly as it was uttered in Court, is in Mr. Ridgway's collection of my speeches at the bar. It was first printed by the Society, and circulated to a very wide extent, — which gave me the greatest satisfaction; as I would rather that all my other speeches were committed to the flames, or in any manner buried in oblivion, than that a single page of it should be lost."

Christian religion, which had been defamed and insulted, it might be here exercised not only safely, but more usefully to the objects of the prosecution, than by the most severe judgment, which must be attended with the ruin of this helpless family. My advice was most respectfully received by the Society, and I have no doubt honestly rejected, because that most excellent prelate Bishop Porteus, and many other honourable persons, concurred in rejecting it; but I had still a duty of my own to perform, considering myself not as counsel for the Society, but for the Crown. If I had been engaged for all or any of the individuals composing it, prosecuting by indictment for any personal injury punishable by indictment, and had convicted a defendant, I must have implicitly followed my instructions, however inconsistent with my own ideas of humanity or moderation; because every man who is injured has a clear right to demand the highest penalty which the law will inflict; but in the present instance I was only responsible to the Crown for my conduct. Such a voluntary Society, however respectable or useful, having received no injury, could not erect itself into a *custos morum*, and claim a right to dictate to counsel who had consented to be employed on the part of the King for the ends of justice only. Whether I was right or wrong, I will not undertake to say, but I am most decidedly of opinion that, if my advice had been followed, and the repentant publisher had been made the willing instrument of stigmatising and suppressing what he had published, Paine's Age of Reason would never again have been printed in England." The defendant was sentenced to a year's imprisonment, with hard labour, in the House of Correction for the County of Middlesex.*

Erskine's demeanour as a witness. May 12. 1798.

It has often been remarked, that men most accustomed to appear before the public, when examined in a court of justice make the worst witnesses. Garrick being called to explain what is "a free benefit," nothing could be got out of him except that "a free benefit is a free benefit." Erskine now exemplified the same remark by talking too much. Arthur

* 26 St. Tr. 653—720. Erskine's Speeches, ii. 183.

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O'Connor being tried for high treason, on a charge which afterwards turned out to be perfectly well founded, although the Crown could not produce sufficient evidence against him, the whole body of the opposition, from whom he had concealed his traitorous correspondence with France, came forward to give him a character for loyalty. Erskine's evidence will be amusing — at least to my professional readers, who remember the rules by which he ought to have been bound. — *Q.* "You know Mr. O'Connor?" — *A.* "I do." — *Q.* "How long have you known him?" — *A.* "I have known him between two and three years, and I live a great deal with those with whom Mr. O'Connor lives much when he is in this country. Mr. O'Connor's friends in this country are principally those persons who are my friends. [The Attorney General interposing.] I do not stand here to argue the admissibility of evidence; and you may depend upon it I shall strictly adhere to giving answers to questions. Mr. O'Connor has principally lived with persons of high rank in the public world — Mr. Fox, Mr. Grey, Mr. Sheridan — all that class of gentlemen with whom I have acted in Parliament. I know Mr. O'Connor's character as well as I can be acquainted with the character of any gentleman who lives principally in another country, but whom I have seen frequently here." — *Q.* "Shall I beg the favour of you to state what that character is?" — *A.* "In my opinion, the best character that any man can possibly possess. I have a sincere regard and esteem for Mr. O'Connor, founded upon my opinion and belief that he is a man of the strictest honour and integrity — a man not only capable of making, but who has made, great sacrifices to what he thinks right. If there be any more prominent feature in his character than another, as far as I am acquainted with it, — and I am much acquainted with it, — it is a noble-mindedness and a high spirit of honour; and I therefore feel myself not only entitled, but bound upon my oath, to say, in the face of God and my country, as a British gentleman, which is the best thing any man can be, that he is incapable in my judgment of acting with treachery or duplicity to any man, but most of all to

those for whom he professes friendship and regard; and I do know positively, of my own knowledge, that he has been in the constant course of professing, not only regard, but admiration and enthusiasm, for the persons whose names I mentioned." — *Q.* "Did you ever observe any difference, either upon public or private subjects, between himself and you?"—*A.* "Recollecting the station I hold in the law, I should be little desirous to urge upon the Court any thing that could be at all questionable in point of evidence; otherwise I could, if the Court thought it right, state many instances of his persevering in the same opinions and in the same regards; this I may say generally, that upon my oath I never had any reason to think that Mr. O'Connor's principles and opinions differed from my own." The Attorney General having again objected, the witness continued: — "I am obliged to Mr. Attorney General, but I do assure the Court that I might have been in another situation, where those objections could not have been made; I might have been defending Mr. O'Connor as one of his counsel, but I felt my situation as a witness, so that I declined."* There is said to have been much tittering in Court excited by this egotistical garrulity.

His defence of Lord Thanet and Mr. Cutlar Fergusson.

Shortly afterwards, Erskine, again in his proper sphere as an advocate, was beheld with universal respect and admiration. Arthur O'Connor, having been acquitted by the jury at Maidstone, where he was tried, — conscious of the fresh charges which might be brought against him, — wished to leave the Court as soon as the verdict was pronounced; — but a new warrant had been issued to arrest him, — which the officer now attempted to execute. A scuffle took place, in Court, between those who wished to seize him and those who favoured his escape. The Government, rather vindictively, alleged, that in the latter class were Sackeville Earl of Thanet, a great Whig nobleman, and Mr. Cutler Fergusson, a young barrister of fine talents and high honour, afterwards Advocate General at Calcutta, and Judge Ad-

* 27 St. Tr. 38.

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vocate to Queen Victoria, with several others of inferior note, — and included them all in a prosecution for a conspiracy to rescue Mr. O'Connor from the custody of the sheriff of Kent. The case was tried at the King's Bench bar, before Lord Kenyon and his brethren.

Erskine, on this occasion, as counsel for the defendants, displayed consummate ability in commenting upon the evidence, and was most successful in showing that no sufficient case was made for the Crown by Mr. Justice Heath and the respectable witnesses who were called, and that the Bow-street officers, who themselves had wantonly begun the riot, were not to be believed. His speech is the best specimen I know of this most difficult and important species of eloquence, upon which the fortune, the life, and the fame of our fellow-citizens frequently depend; but it can only be relished in a critical perusal of the whole trial. Drawing to the conclusion, he said: "The noble and learned lord who presides here to-day, where the proofs have been much stronger, has been in the habit of saying to juries, 'This is not a case for conviction; the defendant *may* be guilty, but there is not a sufficient preponderance in the evidence to pronounce a penal judgment.' These are the maxims, gentlemen, which have given to British courts of justice their value in the country and with mankind. These are the maxims which have placed a guard around them in the opinions and affections of the people. I admit that this consideration deeply enhances the guilt of him who would disturb the administration of such an admirable jurisprudence. But if the Courts of England are so popular and estimable — if they have been through ages after ages the source of public glory and private happiness — *why is this trial to furnish an exception?* For myself, I can only say, that I wish to do my duty, and nothing beyond it. Govern us who will, I desire only to see my country prosperous, the laws faithfully administered, and the people living under them happy and contented. Let England be secure, and no ambition of mine shall ever disturb her. I should rather say, if I were once disengaged from the duties which bind me to my profession, —

> 'Oh for a lodge in some vast wilderness,
> Some boundless contiguity of shade,
> Where rumour of oppression and deceit,
> Of unsuccessful and successful war,
> Might never reach me more!'"

There can be little doubt that there would have been an acquittal, if Mr. Sheridan had not, unfortunately, been called to give evidence for the defendants, and presented to the world another instance of the difference between a great orator and a good witness. On cross-examination by Mr. Law, he was asked this question, "Whether, from the conduct of the defendants, as it fell under your observation, you do not believe they meant to favour the escape of Mr. O'Connor?" Now, he was not asked, and could not lawfully have been asked, his belief as to their *secret wishes* — and he was only to give an opinion upon their conduct as it fell under his observation. But he chose to say, "My belief is, that they *wished* him to escape; but from any thing I saw of their conduct upon that occasion, I am not justified in saying so;" and though he swore positively, on re-examination, that "he did not believe they took any part in rescuing Mr. O'Connor," the jury, never getting over his declaration as to their *wishes*, found them all guilty.

Mr. Fergusson's gratitude to Erskine.

Mr. Fergusson, in addressing the Court when he was brought up to receive sentence, declined to dwell upon the nature of the charge, the proofs by which it was supported, or his own peculiar situation, saying,—"I cannot so soon have forgotten the manner in which these topics were urged in your Lordships' presence in the course of that defence which was made for me by the most zealous of friends, the most able and eloquent of men;" and he thus concluded a Preface to a report of the trial which he published:—"Of his defence let those who heard it judge. It is sufficient to say—and more cannot be said—that it equalled any of those former exertions by which he has for ever shut out all higher praise. I have long enjoyed a portion, perhaps beyond my merits, of his countenance and friendship. It had ever been my study to seek the approbation of a man whom for the mild and amiable features of his private character I esteem and love— whom

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for the noble and manly features which mark his public conduct I admire and venerate — whom the force of genius and eloquence has raised to a height in his profession where he excites no envy, and whose whole life — a life not untried on the slippery stage of politics — nor unexposed to the allurements of corrupt ambition, — has been a life of honour, integrity, and independence. During a period of twenty years he has fought every arduous contest in which the rights of his countrymen and the cause of general liberty have been involved. So many and splendid have been the triumphs of his eloquence that they have left him no further honours to attain: —

> ——— "Nil jam, Theodore, relictum
> Quo virtus, animo crescat, vel splendor honore,
> Culmen utrumque tenes."'——— *

Scandalous prosecution and conviction of the proprietor of the Courier.

From a doubtful case, I have to go to one that was clearly most discreditable both to the Judge and jury who decided upon it, although they were solemnly warned of their duty by the great advocate whose splendid career we are following. The throne of Russia was now filled by that madman, Paul, who, among other freaks, had lately published, in the most wanton manner, an edict prohibiting the exportation of timber, deals, and other naval stores, whereby the commerce of this country was greatly crippled, and a severe injury was inflicted on his own subjects. The following paragraph on the subject, which had previously appeared in several other journals, was copied in the Commercial Intelligence of the "Courier," a newspaper then in strong opposition to the Government. "The Emperor of Russia is rendering himself obnoxious to his subjects by various acts of tyranny, and ridiculous in the eyes of Europe by his inconsistency; he has now passed an edict prohibiting the exportation of

* 27 St. Tr. 821—986. Erskine's Speeches, vol. iv. 139—411. The Court for some time doubted whether, as the riot was laid to have taken place "before the King's Judges," they were not bound to pronounce the specific judgment "that the right arm of each defendant should be cut off;" but finally sentenced Lord Thanet to a year's imprisonment, and a fine of 1000*l*., and Mr. Fergusson to the same length of imprisonment, and a fine of 100*l*. They both made affidavit of their innocence, and their conviction and punishment are sad proofs of the violence of the times.

timber, deals, &c. In consequence of this ill-timed law, upwards of 100 sail of vessels are likely to return to this kingdom without freights." For this the Attorney General filed a criminal information against the proprietor, printer, and publisher of the Courier. In vain did Erskine point out that as the facts stated in the paragraph were allowed to be true, the commentary upon them was justifiable, and that there was here no malicious defamation of a foreign government, but only a wish to point out the wrongs of British subjects. However, Lord Kenyon, sneering at the late Libel Act, said, "I am bound by my oath to declare my own opinion, and I should forget my duty if I were not to say to you that it is a *gross libel*." * The jury found the defendants guilty, and they were sentenced to fine and imprisonment.†

And of Mr. Cuthell, the bookseller.

In the present Memoir I have only one other case of libel to mention, and this likewise should make us gratefully to rejoice that we live in better times. Mr. Cuthell, one of the most respectable booksellers in London, dealt almost exclusively in classical works, and had published the philological writings of the Rev. Gilbert Wakefield. That eminent scholar, being the author of a political pamphlet in answer to one by the Bishop of Llandaff, employed Mr. Johnson, of St. Paul's Church Yard, to publish it, but some copies were sent to Mr. Cuthell's shop, and his servant, without authority, sold a few of them. As soon as Mr. Cuthell was aware of the nature of the publication, he stopped the sale of it. Nevertheless, in addition to criminal informations against the author and the publisher, a criminal information was filed against Mr. Cuthell, — which came on for trial at Guildhall, before Lord Kenyon. The pamphlet was such as would not

Feb. 21. 1799.

* Mr. Fox's Act only requires the Judges to give their opinion on matter of law in libel cases, as in other cases. But did any Judge ever say, "Gentlemen, I am of opinion that this is a wilful, malicious, and atrocious murder?" For a considerable time after the Act passed against the unanimous opposition of the Judges, they almost all spitefully followed this course. I myself heard one Judge say, "As the legislature requires me to give my own opinion in the present case, I am of opinion that this is a diabolically atrocious libel." Lord Denman now puts the just construction on the Act, by leaving the question to the jury, and telling them that "if so and so be the tendency and intention of the paper, it is a libel — *aliter non*."

† 27 St. Tr. 627—642.

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now be noticed by the Attorney General,—consisting chiefly of strong charges of misconduct against the existing Administration, with an exaggerated picture of the deplorable condition to which the country was reduced. But Erskine, as counsel for the defendant, declined entering into the question of libel or no libel,—contending, by the following unanswerable arguments, that the defendant was not criminally responsible, having been ignorant of the contents of the pamphlet, and the publication having been without his authority: "In the case of a *civil* action — throughout the whole range of civil injuries — the master is always *civiliter* answerable for the acts of his servant or agent; and accident or neglect can therefore be no answer to a plaintiff complaining of consequential wrong. If the driver of a public carriage, by gross negligence, overturns the passengers on the road while the proprietor is asleep in his bed at a hundred miles distance, the proprietor must unquestionably pay the damages to the last farthing. The servant may be liable to indictment, and to suffer an infamous judgment; *could the master also become the object of such a prosecution?* CERTAINLY NOT! In the same manner, partners in trade are *civilly* answerable for bills drawn by one another, or by their agents under procuration, though fraudulently and in abuse of their trust; but if one partner commits a fraud by forgery, or fictitious indorsements, so as to subject *himself* to death or other punishment by indictment, *could the other partners be indicted?* To answer such a question here would be folly; because it not only answers itself in the *negative*, but exposes to scorn every argument which would confound indictments with civil actions. Why, then, is *printing and publishing* to be an exception to every other human act? Why is a man to be answerable *criminaliter* for the act of his servant in this case more than in all others? As far, indeed, as damages go, the principle is intelligible and universal; but as it establishes a *crime*, and inflicts a punishment, it is shocking to humanity, and insulting to common sense. The Court of King's Bench, since I have been at the bar, (very long, I admit, before the noble Lord presided in it, but under the

administration of a truly great Judge,) pronounced the infamous judgment of the pillory on a most respectable proprietor of a newspaper, for a libel on the Russian Ambassador, copied, too, out of another paper, but which I myself showed to the Court, by the affidavit of his physician, appeared in the first as well as in the second paper whilst the defendant was on his sick-bed in the country, delirious in a fever. I believe that affidavit is still on the files of the Court. I have thought of it often — I have dreamed of it, and started from my sleep — sunk back to sleep — and started from it again. The painful recollection of it I shall die with. How is this to be vindicated? — from the *supposed* necessity of the case. An indictment for a libel is, *therefore*, considered to be an anomaly in the law. *It* WAS *held so undoubtedly*; but the exposition of that *error* lies before me; — the Libel Act lies before me, which expressly and in terms directs that the trial of a libel shall be conducted *like* every other trial for every other crime; and that the jury shall decide, not upon the mere fact of *printing and publishing*, but *upon the whole matter put in issue*, i. e. the publication of the libel WITH THE INTENTION CHARGED BY THE INDICTMENT. This is the rule by the Libel Act, and you, the jury, as well as the Court, are bound by it."

Lord Kenyon, however, acting on former precedents, and saying that the passing of the Libel Bill was "a race for popularity between two seemingly contending parties, who then chose to run amicably together," the defendant was found *guilty*.—The case was so revolting that after a short imprisonment he was discharged on paying a fine of thirty marks.*

* 27 St. Tr. 641—680. Erskine's Speeches, vol. v. 213—246. There had been one case (the King against the Rev. Bate Dudley, proprietor of the *Morning Post*) in which Erskine, having William Pitt for his junior, had obtained an acquittal under similar circumstances against the summing up of Lord Mansfield. Unfortunately there is no report of this trial extant.—The grievance is at last effectually redressed by "Lord Campbell's Libel Bill," which expressly admits the defence to an indictment or criminal information for a libel, that the publication was by a servant, without any authority from the defendant.

CHAPTER CLXXXII.

CONTINUATION OF THE LIFE OF LORD ERSKINE TILL HIS VISIT TO PARIS DURING THE PEACE OF AMIENS.

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April 26. 1800. Trial of Hadfield for shooting at George III.

I COME to Erskine's last, and perhaps his greatest, display of genius in defending a party prosecuted by the Crown—his speech as counsel for James Hadfield indicted for shooting at King George III. in Drury Lane Theatre. It is now, and will ever be, studied by medical men for its philosophic views of mental disease,—by lawyers for its admirable distinctions as to the degree of alienation of mind which will exempt from penal responsibility,—by logicians for its severe and connected reasoning,—and by all lovers of genuine eloquence for its touching appeals to human feeling. A few detached extracts can only excite a desire to peruse the whole composition, the different parts of which will be found beautifully to illustrate and to give force to each other. It should be remembered that a strong impression had been made by the case for the prosecution, and that the Judges, the jury, and all present viewed with just horror the attempt proved to have been made by an assassin upon the life of a beloved Sovereign.

Erskine's speech for the prisoner.

Thus Erskine began, in a subdued and solemn tone, to win the sympathies of his hearers, and to prepare them for the discussion of the awful and mysterious question arising from the distinction between the insanity of passion, unaccompanied by delusion, and that total derangement of the intellectual faculties which ought to exempt from punishment acts the most atrocious:—"The scene which we are engaged in, and the duty which I am not merely *privileged* but *appointed* by the authority of the Court to perform, exhibits to the whole civilised world a perpetual monument of our national justice. The transaction, indeed, in every part of it, as it stands recorded in the evidence already before us, places our country

and its government and its inhabitants upon the highest pinnacle of human elevation. It appears that upon the 15th of May last, His Majesty, after a reign of forty years, not merely in sovereign power, but spontaneously in the very hearts of his people, was openly shot at (or to all appearance shot at) in a public theatre in the centre of his capital, and amidst the loyal plaudits of his subjects; YET NOT A HAIR OF THE HEAD OF THE SUPPOSED ASSASSIN WAS TOUCHED. In this unparalleled scene of calm forbearance, the King himself, though he stood first in personal interest and feeling, as well as in command, was a singular and fortunate example. The least appearance of emotion on the part of that august personage, must unavoidably have produced a scene quite different and far less honourable than the Court is now witnessing: but his Majesty remained unmoved, and the person *apparently* offending was only secured, without injury or reproach, for the business of this day." After the advocate had gracefully insinuated himself into the favour of the jury, by an appeal to their loyal sympathies, he comes to discuss the question on which their verdict was to depend: "It is agreed by all jurists, and is established by the law of this and every other country, that it is the reason of man which makes him accountable for his actions, and that the deprivation of reason acquits him of crime. This principle is indisputable; yet so fearfully and wonderfully are we made,—so infinitely subtle is the spiritual part of our being,—so difficult is it to trace with accuracy the effect of diseased intellect upon human action, that I may appeal to all who hear me, whether there are any causes more difficult, or which indeed so often confound the learning of the Judges themselves, as when insanity, or the effects and consequences of insanity, become the subjects of legal consideration and judgment? Your province, to-day, will be to decide whether the prisoner, when he did the act, was under the uncontrollable dominion of insanity, and was impelled to it by a morbid delusion, or whether it was the act of a man who, though occasionally mad, or even at the time not perfectly collected, was yet not actuated by the disease, but by the suggestion of a wicked and malignant dis-

Mental alienation and criminal responsibility.

position. It is true, indeed, that in some, perhaps in many cases, the human mind is stormed in its citadel, and laid prostrate under the stroke of frenzy; these unhappy sufferers, however, are not so much considered by physicians as maniacs, as in a state of delirium from fever. There, indeed, all the ideas are overwhelmed, for reason is not merely disturbed, but driven from her seat. Such unhappy patients are unconscious, therefore, except at short intervals, even of external objects, or at least are wholly incapable of understanding their relations. Such persons, and such persons alone (except idiots), are wholly deprived of their understandings, in the Attorney General's sense of that expression. But these cases are not only extremely rare, but can never become the subjects of judicial difficulty. There can be but one judgment concerning them. In other cases Reason is not driven from her seat, but Distraction sits down upon it along with her, holds her trembling upon it, and frightens her from her propriety. Such patients are victims to delusions of the most alarming description, which so overpower the faculties, and usurp so firmly the power of realities, as not to be dislodged and shaken by the organs of perception and sense: in such cases the images frequently vary, but in the same subjects are generally of the same terrific character. *Delusion*, therefore, where there is no frenzy or raving madness, is the true character of insanity; and where it cannot be predicated on a man standing for life or death for a crime, he ought not, in my opinion, to be acquitted; and if courts of law were to be governed by any other principle, every departure from sober rational conduct would be an emancipation from criminal justice. I shall place my claim to your verdict upon no such dangerous foundation. I must convince you not only that the unhappy prisoner was a lunatic within my own definition of lunacy, but that the act in question was the IMMEDIATE UNQUALIFIED OFFSPRING OF THE DISEASE."*

* When I quoted this last sentence on the trial of Oxford for shooting at Queen Victoria, Lord Denman said, "he thought the criterion here proposed was rather too unfavourable to the party accused, and that Erskine, on this occasion, felt himself safe in extending criminal responsibility so far, knowing that he could prove a clear case of positive delusion as a defence for his client."

History of Hadfield.

Having at considerable length, and with never-failing spirit and distinctness, propounded and illustrated his doctrine, he proceeded to give a most interesting narrative of the life of his unhappy client, who had served abroad as a soldier, — who was brave and orderly, — who had received in battle a wound which laid his head open to the brain, who had ever after been subject to fits of insanity, for which he had been in confinement, who had recently taken up the notion that his immediate death by violence, if he did not commit suicide, would produce some great benefit to mankind, — and who, although he was loyally attached to the King and the whole royal family, had formed the resolution to fire at his Majesty from the pit of the theatre, so that he might be sure to be apprehended and executed for high treason. The evidence of the Duke of York had made a very deep impression on the jury, as he said, "I saw the prisoner in a room at Drury Lane immediately after his apprehension; the moment I entered, he said, 'God bless you, I know your Royal Highness; you are the Duke of York, I served under you.' I said, 'I think you have been one of my orderlies.' He answered, 'Yes, I have.' I then asked him particularly 'when?' he said, 'The day after the battle of Fraymar.' I had a long conversation with him, during which he seemed perfectly to understand the subjects on which we conversed. He said once or twice that he knew perfectly well that his life was forfeited. He said that he was tired of life, and he regretted nothing but the fate of a woman who was his wife. There was no irregularity in his conversation from which I could collect any existing derangement of his understanding; on the contrary, he appeared to speak as connectedly as possibly could be." Erskine completely took off the effect by introducing some anecdotes, which, while they amused the attention of the jury, bore directly on the issue they had to try: — "I conceive, gentlemen, that I am more in the habit of examination than either that illustrious person, or the witnesses who have spoken in similar terms; yet I well remember (indeed I never can forget it) that since the noble and learned Judge has presided in this Court, I examined for

Anecdotes of insanity.

the greater part of a day, in this very place, an unfortunate gentleman, who had indicted a most affectionate brother, together with the keeper of a mad-house at Hoxton, for having imprisoned him as a lunatic, whilst, according to his own evidence, he was in his perfect senses. I was unfortunately not instructed in what his lunacy consisted, although my instructions left me no doubt of the fact; but not having the clue, he completely foiled me in every attempt to expose his infirmity. You may believe I left no means unemployed which long experience dictated, but without the smallest effect. The day was wasted; and the prosecutor, by the most affecting history of unmerited suffering, appeared to the Judge and jury, and to a humane English audience, as the victim of most wanton and barbarous oppression. At last, Dr. Sims came into Court, who had been prevented by business from an earlier attendance. From him I learned that the person who, under my long examination, had appeared to be so rational, intelligent, and ill-used, believed himself to be the Lord and Saviour of mankind — not merely at the time of his confinement, which was alone necessary for my defence, but during the whole time he had been triumphing over every attempt to surprise him in the concealment of his disease. I then affected to lament the indecency of my ignorant examination, — when he expressed his forgiveness, and said, with the utmost gravity and emphasis, in the face of the whole Court, 'I AM THE CHRIST:'—and so the cause ended." He then related, in the words of Lord Mansfield, a still more extraordinary instance of monomania, accompanied with cunning to conceal it: — "A man of the name of Wood had indicted Dr. Munro, for keeping him as a prisoner, when he was sane. He underwent a most severe cross-examination from the defendant's counsel without exposing his infirmity: but Dr. Battye having come upon the bench by me, and having desired me to ask him 'what was become of the Princess with whom he had corresponded in cherry-juice,' he showed in a moment what he was. He answered, that 'there was nothing at all in that, because having been (as every body knew) imprisoned in a high

tower, and being debarred the use of ink, he had no other means of correspondence but by writing his letters in cherry-juice, and throwing them into the river which surrounded the tower, where the Princess received them in a boat.' There existed of course no tower, no imprisonment, no writing in cherry-juice, no river, no boat, no princess, — but the whole was the inveterate phantom of a morbid imagination. I immediately directed Dr. Monro to be acquitted. But this madman again indicted Dr. Monro, in the city of London, through a part of which he had been carried to his place of confinement. Knowing that he had lost his cause by speaking of the princess, at Westminster, (such is the wonderful subtlety of madmen,) — when he was cross-examined on the trial in London, as he had successfully been before, in order to expose his madness, all the ingenuity of the Bar, and all the authority of the Court, could not make him say a single syllable upon that topic which had put an end to the indictment before, although he still had the same indelible impression upon his mind, as he signified to those who were near him; but, conscious that the delusion had caused his former defeat, he obstinately persisted in holding it back. His evidence at Westminster was then proved against him by the short-hand writer; — and I again directed an acquittal."

Erskine opened in the following affecting words, which are said to have drawn tears from almost all present, — the evidence he was to give of a recent attempt by the prisoner upon the life of a child whom he tenderly loved: — "To proceed to the proofs of his insanity down to the very period of his supposed guilt: This unfortunate man before you is the father of an infant of eight months, and I have no doubt whatever that, if the boy had been brought into Court (but this is a grave place for the administration of justice, and not a theatre for stage effect) — I say, I have no doubt whatever that, if this poor infant had been brought into Court, you would have seen the father writhing with all the emotions of parental affection; — yet upon the Tuesday preceding the Thursday when he went to the play-house, you will find his disease still urging him forward, with the impression that the time

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was come when he must be destroyed for the benefit of mankind; and in the confusion, or rather delirium, of this wild conception, he came to the bed of the mother who had this infant in her arms, and, snatching it from her, was about to dash out its brains against the wall in her presence, when his arm was arrested from the dreadful attempt."

Peroration.

Having clearly distinguished this case from that of Lord Ferrers and others of the same class,—confidently anticipating an acquittal, he thus quietly concluded, as if he had been the Judge summing up the case to the jury:—"Nothing can more tend to the security of his Majesty and his Government than the scene which this day exhibits, in the calm, humane, and impartial administration of justice. I declare to you solemnly, that my only aim has been to secure for the prisoner at the bar, whose life and death are in the balance, that he should be judged rigidly by the evidence and the law. I have made no appeal to your passions—you have no right to be swayed by them. This is not even a case in which, if the prisoner be found guilty, the royal mercy should be counselled to interfere: he is either an accountable being or not accountable; if he was *unconscious* of the mischief he was engaged in, he is *not guilty;* but if, when the evidence closes, you think he was conscious, and that he maliciously meditated the treason he is charged with, it is impossible to conceive a crime more detestable; and I should consider the King's life to be ill attended to indeed, if not protected by the full vigour of the laws, which are watchful over the security of the meanest of his subjects. It is a most important consideration, both as it regards the prisoner and the community of which he is a member. Gentlemen, I leave it with you."*

Acquittal of the prisoner on the ground of insanity.

He had perceived some time, from the looks and nods of the jury, that they were impatient to acquit. After a few witnesses had been examined, Lord Kenyon stopped the trial, on the ground, that a case of insanity, at the very

* Lord Erskine, in a letter (now lying before me) to Mr. Howell, the very learned editor of the "State Trials," says,—"It is lucky you have got Hadfield. I hope you have printed my speech as published by Ridgway, as there were many blunders in Gurney's copy, who was then getting very old. None of my speeches have been so much read and approved."

time when the pistol was fired, had been clearly made out. An Act of Parliament passed (40 Geo. 3. c. 94.) for the detention during the pleasure of the Crown of persons acquitted of treason or felony, on the ground of insanity. Under this Act, Hadfield was confined in Bedlam many years; and it is said, that he not only survived George III., but all the judges, all the jurymen, and all the counsel, who had taken part in his trial.*

Erskine as an advocate in civil actions.

I should give a very defective sketch of Erskine's career at the Bar, if I did not mention his merits as an advocate in civil actions. Unfortunately very few specimens of his eloquence in this kind have been preserved; but we know, from undoubted contemporary authority, that he here shone unrivalled, — varying in the display of talent according to the opportunity of displaying it. For many years he was in almost every cause tried at *Nisi prius* at Westminster and at the Guildhall of the City of London, before Lord Mansfield and Lord Kenyon. He was generally retained by the plaintiff; and, whether his client sued on a bill of exchange, or on a policy of insurance, or for an assault, or for defamation, or to establish a doubtful pedigree, or to impeach the validity of a will, or for a breach of promise of marriage, or for the seduction of a daughter or a wife, he did all for his client that could be effected by zeal, ingenuity, boldness, discretion, insight into the human heart, and control over human feelings.

His discomfiture in the case of Day v. Day.

He was almost invariably successful when he went upon special retainers. Indeed, to preserve the *prestige* of his invincibility, he declined (as he was entitled to do, according to professional etiquette) being counsel in a desperate case to be tried in a Court in which he did not usually practise. — He met with one signal defeat, which he recollected with deep mortification to the close of his life. This was in *Day*

* When he had become a very old man, I was introduced to him by Dr. Haslam, the author of several works upon madness,—to which he contended all men were subject, less or more. The supposed assassin was reading a newspaper, and talked very rationally upon the topics of the day; but he continued at times subject to strong delusion, and it would have been very unsafe to have discharged him from custody.

See 27 St. Tr. 1281—1356. Erskine's Speeches, vol. v. 1—48.

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v. *Day*, tried at the Huntingdon Assizes, before Mr. Justice Heath, in the year 1797. It turned out to be the Douglas cause over again in miniature,— the question being, whether the Defendant, who had been brought up as heir to a considerable family and a large estate, was not a supposititious child purchased from a poor woman in a workhouse. Erskine was for the Plaintiff, and he himself considered his speech on this occasion as amongst his very best forensic efforts. Secure of victory, he thus magnanimously spoke of the defendant: "Notwithstanding the suspicions which from the beginning obscured and questioned his birth, he was, nevertheless, acknowledged by his family, and has arrived at man's estate with the feelings of a gentleman. — I learn, indeed, that his conduct and character are every way worthy of a genuine descent. — I hear the very best report of him from all quarters, and it makes a strong and painful impression upon me. I am wholly a stranger in this place, utterly unknown, I believe, to all of you whom I am addressing; but I might safely appeal to those around the table who have long known me, whether they think me capable of enjoying any triumph or gratification in being even the instrument of the justice I seek at your hands, when the administration of it must give so much pain to a deserving individual wholly guiltless of the fraud which placed him in his present station. — In such a case the best minds find it the most difficult to be just; because the understanding shrinks back from its office, and the heart pulls against the faithful discharge of such a distressing jurisdiction. But it is necessary, in equal justice, to contemplate the other side of the case, and to be made impartial by revolving in your minds the situation of the plaintiff if the defendant's birth be really supposititious." — The case as opened was sworn to by several witnesses; but their credit was a good deal shaken in cross-examination; and, after a summing up from Mr. Justice Heath, which appears to me very fair, the jury found a verdict for the defendant.

August 3. 1799.

Erskine, on his return to London, wrote a letter to the plaintiff's attorney, in which he says, "The charge of the Judge is a reproach to the administration of English justice,

being, from the beginning to the end of it, a mass of consummate absurdity, and ignorance of the first rules of evidence. If he had done his duty, I think the verdict would have been otherwise. You, however, have the consolation to reflect, that you have not been wanting in any part of the duty cast upon you; and I have the greatest pleasure in assuring you that, in the whole course of my professional life, I never saw greater vigilance, nor a more enlightened course of proceeding, than has marked and distinguished you in this unfortunate business." A rule for setting aside the verdict, and for a trial at bar, having, after long argument, been discharged, Erskine, more indignant, thus addressed the attorney: "My opinion of Mr. Day's cause you can scarcely believe to be at all altered; my mind must be indeed shallow in the extreme if any thing which passed in the King's Bench could make any other impression upon it than that of utter contempt for the prejudices of Judges in the blind support of one another's errors. Kenyon's mind is of a size, and, generally speaking, of a character to disdain such a course; but he appears to me to have laid aside his reason in the speech he delivered."—Many years after he said, in a letter to the Plaintiff, who was then about to publish the trial, "Take care not to abridge a syllable of Mr. Justice Heath's charge; when the whole appears together, nothing but the utmost contempt can follow." And when the publication came out, he thus again addressed him: "Nothing could be more perfectly honourable and just than your conduct throughout in the painful and unprosperous endeavour to establish your inheritance. The best possible vindication of your conduct is to have published, *as you have done*, a faithful account of the proceedings. I should be sorry, however, if I had been formerly a Common Law Judge, that the public should have to read such evidence as you have printed, and *such a summing up* of mine.*

March 16. 1798.

Jan. 27.

* ——— "Manet altâ mente repostum
Judicium Paridis."—

This letter bears date 2d Feb. 1823, within a few months of Lord Erskine's death. I have heard an anecdote (which was probably a pure invention) that he thus

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His crim. con. speeches.

It was in actions for *criminal conversation* that he was thought chiefly to excel. He joined with all right-judging persons in condemning the English law that permits, and, indeed, with a view to a divorce, requires, an injured husband to seek a pecuniary compensation for his dishonour: but when called upon to dwell upon the happiness arising from the purity of domestic life, and the ruin produced by its contamination, while performing his forensic duties he inculcated morality, perhaps, more forcibly than some orthodox divines from their pulpits. His two most celebrated speeches upon this subject,—one when he was for the plaintiff, and the other when he was for the defendant,—are preserved, having been published under his own superintendence. The first was *Markham* v. *Faucet*, in which the action was brought by a clergyman, the son of the Archbishop of York, against a country gentleman who lived in his parish, and with whom he had been on terms of great intimacy. After describing the long-continued friendship of the parties, he thus continued: "Yet, dreadful to relate, and it is the bitterest evil of which the plaintiff has to complain, a criminal intercourse, for nearly five years before the discovery of the connection, had most probably taken place. I will leave you to consider what must have been the feelings of such a husband, upon the fatal discovery that his wife—and such a wife—had conducted herself in a manner that not merely deprived him of her comfort and society, but placed him in a situation too horrible to be described. . . . He does not know at what time this heavy calamity fell upon him. He is tortured by the most afflicting of all human sensations. When he looks at the children whom he is by law bound to protect and to provide for, and from whose existence he ought to receive the delightful return which the union of instinct and reason has provided for the continuation of the world, he knows not

His speech in Markham v. Fawcet.

successfully took off the effect of another strong summing up against him in an important cause. Old Mr. Justice Gould, the presiding Judge, being hardly audible, and quite unintelligible to the jury, Erskine, sitting in their view, nodded assent to all that was said; and—making them believe that the law was laid down altogether in his favour,—obtained the verdict.

whether he is lavishing his fondness and affection upon his own children, or upon the seed of a villain, sown in the bed of his honour and his delight. He starts back with horror, when, instead of seeing his own image reflected from their infant features, he thinks he sees the destroyer of his happiness, — a midnight robber introduced into his house under professions of friendship and brotherhood, — a plunderer, not in the repositories of his treasure, which may be supplied, or lived without, — '*but there where he had garnered up his hopes — where either he must live, or bear no life.*' God himself, as he has constituted human nature, has no means of alleviating such an injury as this. While the sensibilities, affections, and feelings which he has given to man remain, it is impossible to heal a wound which strikes so deep into the soul. . . . I have established a claim for damages that has no parallel in the annals of fashionable adultery. It is rather like the entrance of sin and death into this lower world. The pair were living like our first parents, in Paradise, till this Demon saw and envied their happy condition. Like them, they were in a moment cast down from the pinnacle of human happiness into the very lowest abyss of sorrow and despair. In one point, indeed, the resemblance does not hold, which, while it aggravates the crime, redoubles the sense of suffering. 'It was not an enemy that hath done me this dishonour, for then I could have borne it. Neither was it mine adversary that did magnify himself against me; for then peradventure I would have hid myself from him: but it was even thou, my companion, my guide, mine own familiar friend.'" *

His speech in Howard v. Bingham.

In *Howard* v. *Bingham*, which was an action of the same description by the heir presumptive to the Duke of Norfolk against the eldest son of the Earl of Lucan, Erskine was counsel for the defendant, but made his client appear the party aggrieved. There had been a mutual attachment between the lady, a daughter of Lord Fauconberg, and the defendant: they had been engaged to be married before her acquaintance with the plaintiff, and her parents had broken off that match for what appeared the superior advantages of a

* Erskine's Speeches, vol. v. 169—195.

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new offer. This was the theme of Erskine's splendid apology, or rather retaliation, and countercharge:—"I have the noble Judge's authority for saying that the gist of this action is *the plaintiff's loss of the comfort and society of his wife by the seduction of the defendant.* The loss of her affection and of domestic happiness are the only foundations of his complaint. Now, before any thing can be lost, it must have *existed*,—before any thing can be taken away from a man, he must have had it,—before the seduction of a woman's affections from her husband can take place, he must have possessed her affections..... In order, therefore, to examine this matter (and I shall support every syllable that I utter with the most precise and incontrovertible proofs), I will begin by drawing up the curtain of this blessed marriage-bed, whose joys are supposed to be nipped in the bud by the defendant's adulterous seduction. Nothing certainly is more delightful to the human fancy than the possession of a beautiful woman in the prime of health and youthful passion: it is beyond all doubt the highest enjoyment which God in his benevolence and for the wisest purposes has bestowed upon his own image: I reverence as I ought that mysterious union of mind and body which, while it continues our species, is the source of all our affections,—which builds up and dignifies the condition of human life,—which binds the husband to the wife by ties more indissoluble than laws can possibly create, and which by the reciprocal endearments arising from a mutual passion, a mutual interest, and a mutual honour, lays the foundation of that parental affection which dies in the brutes with the necessities of nature, but which reflects back upon the human parents the unspeakable sympathies of their offspring, and all the sweet, delightful relations of social existence. While the curtains therefore are still closed on this bridal scene, your imaginations will naturally represent to you this charming woman, endeavouring to conceal sensations which modesty forbids the sex, however enamoured, too openly to reveal,—wishing beyond adequate expression what she must not even attempt to express, and seemingly resisting what she burns to enjoy. Alas, gentlemen! you must pre-

pare to see in the room of this a scene of horror and of sorrow; you must prepare to see a noble lady, whose birth surely required no further illustration; who had been courted to marriage before she heard even her husband's name; and whose affections were irretrievably bestowed upon and pledged to my honourable and unfortunate client. You must behold her given up to the plaintiff by the infatuation of parents, and stretched upon the bridal bed as upon a rack,—torn from the arms of a beloved and impassioned youth, himself of noble birth,—only to secure the honours of a higher title,—a legal victim on the altar of heraldry. Gentlemen, this is no high colouring for the purpose of a cause; no words of an advocate can go beyond the plain unadorned effect of the evidence: I will prove to you that when she prepared to retire to her chamber, she threw her desponding arms around the neck of her confidential attendant, and wept upon her as a criminal preparing for execution: I will prove to you that she met her bridegroom with sighs and tears—the sighs and tears of afflicted love for Mr. Bingham, and of rooted aversion to her husband. Gentlemen, this was not the sudden burst of youthful disappointment, but the fixed and settled habit of a mind deserving of a happier fate. I shall prove that she frequently spent her nights upon a couch, in her own apartments, dissolved in tears; that she frequently declared to her woman that she would rather go to Newgate than to Mr. Howard's bed; and it will appear by her own confession that for months subsequent to the marriage she distinctly refused him the privileges of a husband.... My learned friend deprecates the power of what he terms my pathetic eloquence. Alas, gentlemen, if I possessed it, the occasion forbids its exertion, because Mr. Bingham has only to defend himself, and cannot demand damages from Mr. Howard for depriving him of what was *his* by a title superior to any law which man has a moral right to make. Mr. Howard was NEVER MARRIED: God and nature forbad the banns of such a marriage. If, indeed, Mr. Bingham this day could have by me addressed to you his wrongs in the character of a plaintiff demanding reparation, what damages might I not have asked

for him?—and without the aid of this imputed eloquence, what damages might I not have expected? I would have brought before you a noble youth, who had fixed his affections upon one of the most beautiful of her sex, and who enjoyed hers in return,—I would have shown you their suitable condition,—I would have painted the expectation of an honourable union, and would have concluded by showing her to you in the arms of another, by the legal prostitution of parental choice in the teeth of affection,—with child by a rival, and only reclaimed at last, after so cruel and so afflicting a divorce, with her freshest charms despoiled and her very morals in a manner impeached, by asserting the purity and virtue of her original and spotless choice. Good God! imagine my client to be PLAINTIFF, and what damages are you not prepared to give him? And yet he is here as DEFENDANT, and damages are demanded against him. Oh, monstrous conclusion!"

He went on in the same strain above an hour longer, taking occasion to warn the aristocracy of the ruin which the mercenary spirit which was here displayed would bring upon their order. The jury, as they afterwards declared, were resolved to find a verdict for the defendant, with heavy damages to be paid to him, — till they were reminded by the Judge that no blame was imputable to the plaintiff, as he had not been made aware of the previous engagement; that when the lady, under whatever influence, had vowed to be his at the altar, and their hands had been joined by the priest, she became his wife according to the laws both of God and man; that their sacred union ought to have been respected by the defendant, however much he was to be pitied, as his wrongs were irremediable; that it was his duty to have fled from temptation, instead of cherishing a guilty flame; that he had inflicted an injury for which he was liable to make compensation, by rendering it impossible for the plaintiff ever to win the affections of his wife, or to behold her more; that the jury were bound by their oaths to find a verdict for the plaintiff, if they believed that the adultery had been committed, and that they would not be justified in affixing a brand upon him by awarding trifling damages. The jury at

last did find for the plaintiff, damages 500*l.* — 10,000*l.* being the lowest sum which in such cases was then usually awarded. *

His speech in Dunning *v.* Sir Thos. Turton.

In the case of *Dunning* v. *Sir Thomas Turton*, of which we have a very imperfect report, Erskine appears to have produced, perhaps, a still greater effect by describing the state of a husband fondly attached to his wife, but suspecting her fidelity,— painting in the most lively colours the different emotions of his soul — the agonies of suspense — the feverish irritation of unrelieved doubt — the struggles of the wounded spirit as to a fact, which, while the heart wanted to disbelieve, reason told him was but too true. The advocate excited the most thrilling emotions when he quoted from Othello —

> "Oh, what damned moments tells he o'er,
> Who doubts, believes, suspects, yet strongly loves."

"But," added he, with overwhelming force, "when suspicion is realised into certainty, and his dishonour is placed beyond the reach of doubt, Despair assumes her dominion over the afflicted man, and well might he exclaim from the same page —

> ———'Had it pleased Heaven
> To try me with affliction; had He rain'd
> All kinds of sores and shames on my bare head;
> Steep'd me in poverty to the very lips;
> Given to captivity me and my hopes,
> I should have found in some place in my soul
> A drop of patience. But now ——'"

He stopped, and tears filled every eye. His recitation was perfect, and his felicitous quotations, though carefully premeditated, seemed the spontaneous recollections of the moment. †

It is with unfeigned sorrow that I must take leave of Erskine as an advocate at the bar, where his superiority to the rest of mankind was so striking,—and that I must now attend him through scenes in which he acted a subordinate

* Erskine's Speeches, vol. v. 195—212.

† I was told by a barrister who had often been in causes with him that he used to produce his proposed quotations at consultation the night before, and take the opinion of his juniors upon them; but my learned informant was noted for "shooting with a long bow."

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part, and in which justice requires that he should sometimes be severely censured.

1798–1801. Erskine's secession from the House of Commons.

During the concluding years of Mr. Pitt's first Administration, Erskine almost entirely absented himself from the House of Commons, despairing of his party, and of the country, and defending the measures of secession to which the opposition leaders then imprudently resorted. I do not much wonder that he should not have taken part in the debates concerning the conduct of the war; for the prostrate Whigs were not able to get a hearing either in or out of Parliament, when they attempted to touch upon this subject,—tremendous majorities approving of the expedition to Walcheren,—of the expedition to Ferrol,—of the expedition to Quiberon, and of wasting the strength of the nation in taking Sugar Islands in the West Indies, for the extension of the slave trade. But it is remarkable that he should have been silent upon the Union with Ireland, and other great constitutional questions which were from time to time brought before the House of Commons. He probably persuaded himself that it was better for the public, that he should offer no resistance to the measures of the Government; and he had no pleasure in going from Westminster Hall, where he was applauded and triumphant, to St. Stephen's Chapel, where his powers of persuasion utterly failed, and where he was sometimes even slighted. He did speak in favour of a Bill to make adultery an indictable offence*, and he supported another Bill to check the establishment of monastic orders in this country†, neither of them being connected with politics; but he considered it vain to combat the supremacy of Pitt, who, having carried the Irish Union, and annihilated the Whig Opposition, seemed more firmly established in power than at any former period.

Jan. 1801. Resignation of Mr. Pitt.

But at the opening of the first session of the united Parliament of Great Britain and Ireland a rumour arose, that from the failure of his attempt to grant Catholic emancipation, or from a desire that peace should be negotiated by

* 35 Parl. Hist. 309. † Ib. 361.

another Minister, he was about voluntarily to descend into the rank of a private citizen. This strange Ministerial crisis, prolonged by the mental alienation of the King, I have described in the Life of Lord Loughborough, and I must recur to it in the Life of Lord Eldon, as it terminated in transferring the Great Seal from the one to the other. But Erskine had no share in it; for the Whigs had only to look on as spectators — the struggle being between different sections of their opponents, — and no prospect appeared of their ever being restored to power. When Mr. Addington was, at last, installed in office, several of them, with a view to rescue him from the thraldom of Pitt, were inclined to support him; and there actually was a negotiation opened for Erskine becoming Attorney General. "During the Administration of Addington," says Mr. Moore, "Erskine, led by the example of Lord Moira, Sheridan, Tierney, and others of the friends with whom he usually acted, manifested a willingness to support the new Minister, and was even on the point of accepting the office of Attorney General. Overtures to that effect having been transmitted to him by Mr. Addington, he thought it his duty to lay them before the Prince of Wales, whose service, in case of an acceptance of the office, it would be necessary for him to relinquish. In his answer, conveyed through Mr. Sheridan, the Prince, while he expressed the most friendly feelings towards Erskine, declined, at the same time, giving any opinion as to either his acceptance or refusal of the office of Attorney General if offered to him under the present circumstances. His Royal Highness also added the expression of his sincere regret that a proposal of this nature should have been submitted to his consideration by one of whose attachment and fidelity to himself he was well convinced, but who ought to have felt, from the line of conduct adopted and persevered in by his Royal Highness, that he was the very last person who should have been applied to for either his opinion or concurrence respecting the political conduct or connections of any public character, especially of one so intimately connected with him and belonging to his family. Upon this expression of the Prince's sentiments,

Mr. Addington Prime Minister.

Negotiation for Erskine becoming Attorney General.

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the offer was of course declined." * By listening to this overture Erskine incurred no suspicion of vacillation; for he really believed, at the time, that Mr. Addington not only was desirous of making peace, but that he meant to depart from the arbitrary policy which had been adopted, since the year 1792, with respect to the internal government of the country. †

Erskine opposes the Coalition of Fox with the Grenville-Windhamites.

He showed his steady adherence to his old principles by the part which he soon after took in the projected coalition with the "Grenville-Windhamites," as they were called, — a section of Mr. Pitt's colleagues that had gone out with him, and were now desirous of having Mr. Fox for their leader, with a view of vigorously pushing on the prosecution of the war. He was one of those who met at Norfolk House, for the purpose of frankly remonstrating with Mr. Fox against the offered alliance; and the remonstrance then agreed to, strongly marked by generous sentiments of private friendship and of enlightened patriotism, was said to have been drawn by him. ‡

Nov. 3. 1801. He supports Mr. Addington. Nov. 13. 1801.

Without joining the Administration, he gave it his countenance. The peace of Amiens being concluded, he voted with the majority in approving of it; and he made a vigorous speech in defence of the Convention with Russia for defining some of our controverted belligerent rights against neutrals.

* Life of Sheridan, ii. 323.

† The following are extracts of letters which he wrote to a friend while this negotiation was going on: — "I know and feel my own high station in the profession (which, I may say in a private letter, no man ever held before for such a number of years), and I know and feel also the etiquette it imposes upon me with regard to my juniors, however accidentally placed above me by temporary political offices. But so far am I on that account from wishing to stand in the way of the advantages which such accidents may be thought, from custom, to have conferred, or may hereafter confer upon those who hold them, that I should be the very last man in the world to take the least interest in finding any precedents, if any were wanting, for supporting any disposition in any body to support my advancement out of the proper course of things." . . . . . "For myself, I can say positively, that if *all* the high offices in the law were to fall vacant to-morrow, and to be filled up without any thought of me, it would not in the slightest degree affect the conduct which I have prescribed to myself, from the best attention I have been able to give to that line of conduct which the public ought to expect from me, and which my conscience approves." . . . . "I am in a lucrative and honourable situation, and I will remain in it till the time comes (if it ever does) when I can vindicate to friends and foes the change in my situation."

‡ Moore's Life of Sheridan, ii. 324.

On this occasion, he said: — "I cannot, Sir, refuse myself the pleasure of expressing the most unqualified approbation of the manner in which the Convention has been so happily concluded. Not long ago I saw three great nations of the North confederated against the vital interests of our country; yet in so short a time afterwards I now see the same powers pledged to concur with us in their support, by upholding our ancient system of international law. The effect of such a successful conspiracy must have been to establish universally, that free bottoms should make free goods; because they who denied the right of search, and enforced the refusal, annihilated every regulation against enemies' property as contraband of war, since it is only by search that the invasion of neutrality can be detected. The right of search is now recognised as the general law of civilised states. We have preserved the honour and interests of our own country by not forgetting that other countries have honour and interests also. Without this reasonable compromise we could not have had a peace so likely to continue, for it will be pursued as it was made — in the spirit of peace. I wish France and every other nation to see that our divisions are at an end. We have made many sacrifices in the course of the late contest, and we must make many more to redeem our country from the consequences of a war, the continuance of which might have been fatal to it, and to the whole civilised world. I hope, Sir, that Ministers will now pursue towards their fellow-subjects the same liberal policy which upon this occasion they have shown towards adversaries. This is still wanting. I am now looking forwards, and confidently maintain that, if the people of Great Britain and Ireland were governed according to the spirit of our laws, mildly administered, they would, to use the language of Mr. Burke, 'for ever cling and grapple to you, and nothing could tear them from their allegiance.' Nothing, indeed, can estrange them from our invaluable Constitution but shutting them out from its benefits." *

* 36 Parl. Hist. 278.

CHAP. CLXXXII.

May 7. 1802.

During the present session, Erskine again came forward in the debate caused by Mr. Nicholl's motion to "thank the Crown for the removal of Mr. Pitt;" and Sir H. Mildmay's amendment, "That Mr. Pitt, for his services while Minister, deserved the gratitude of the House." He was particularly severe on Mr. Pitt's injudicious refusals to treat for peace with Bonaparte; and on his resignation, — which he represented as "a desertion of the vessel of the state when she was labouring in the tempest, and in danger of being dashed to pieces among the rocks which surrounded her." The vote of thanks, however, was carried by a majority of 224 to 52*, partly from the recollection of Pitt's former Administration, and still more from the anticipation that he must ere long be Minister again.

* 36 Parl. Hist. 616. 653.

CHAPTER CLXXXIII.

CONTINUATION OF THE LIFE OF LORD ERSKINE TILL HE BECAME LORD CHANCELLOR.

CHAP. CLXXXIII.

A. D. 1802.

Erskine visits Paris.

In the long vacation of this year, Erskine went to Paris, where he expected that he must be gazed at — on account of his fame as an advocate, and the leading part which he conceived he had taken for many years in the House of Commons; but his vanity was considerably mortified by his reception there. He knew hardly any thing of the French language, so that he could not assist in spreading his own fame; — none of his forensic speeches had been translated into French, and his political consequence was utterly extinguished by the presence of Fox, who had gone over to collect materials for his "History of the Reign of James II.," and was run after as a prodigy.

His reception by the First Consul.

We have the following account from an eye-witness of our hero's reception by the First Consul: "Bonaparte, at the levee, made a long florid address to Fox, to which the modest statesman made no reply. Erskine's presentation followed. I am tempted to think that he felt some disappointment at not being recognised by the First Consul; there was some difficulty at first, as Erskine was understood to speak little French. Monsieur Talleyrand's impatient whisper to me, I fancy I yet hear: "*Parle-t-il François?*" Mr. Merry, the English Consul, already fatigued with his presentations, and dreading a host to come, imperfectly designated Erskine — when the killing question followed, "*Etes-vous lègiste?*" This was pronounced by Bonaparte with great indifference, or, at least, without any marked attention.*

* Trotter's Memoirs of Fox, p. 268. However, the Right Hon. Thomas Erskine writes to me, — "Mr. Trotter has misunderstood the circumstance to which he alludes, obviously in no friendly spirit. My father was introduced to

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A.D. 1802.

Reception of English and French lawyers, by their respective Bars.

Erskine was better treated at the Cour de Cassation, if we may credit Monsieur Berryer the Elder, who, in his "*Souvenirs*," is rather imaginative. "One morning," says he, in narrating his visit to London in 1822, "I repaired to the Court of King's Bench, accompanied by a solicitor, with no other intention than that of being present as a looker-on at one of its sittings. The Attorney General perceives my white head, the only one in the crowd; he sends a *huissier, bearing a wand of ivory*, to speak to me. The *huissier* presses through the crowd, reaches the place where I stand, and in a few words of English, translated by my solicitor, invites me to follow him to the bar of the amphitheatre set apart for the advocates. The bar opens. Two young advocates, in wigs *à la Louis Quatorze*, come forward to introduce me. All the advocates — the Broughams, the Scarletts, being of the number — rise to salute me. I was dressed in a plain black surtout. My two young attendants assigned me a seat between them. They keep me, during the sitting, *au courant* of what is going on. It was a bankruptcy matter, under an inquiry by a jury. The jury having retired to deliberate, I took a respectful leave of the advocates *en masse*. — All the London newspapers of the day following gave a report, highly flattering to both countries, on this solemn reception of a Parisian advocate. I have since ascertained that it was by way of return for my having, twenty years before, procured the famous Erskine a reception equally warm from all my brethren at one of the sittings of the Appeal Court at Paris." But if Erskine had not more

Bonaparte not by name, but by his official title as Chancellor to the Prince of Wales. The First Consul, not knowing the nature of this office, or the name of the individual who filled it, put the question, '*Etes-vous légiste?*' When my father was afterwards, at an evening party given by Madame Josephine, introduced to the hero by his name, Napoleon alluded to his former interview by saying, 'You are better known to me by your name than your office.'"

Curran, who was then likewise at Paris, escaped the mortification of such a question being addressed to him, by luckily keeping away from Bonaparte's levee. Thus he wrote to a friend while still in some doubt upon the subject:— "I don't suppose I shall get myself presented to the Consul; — not having been privately baptized at St. James's would be a difficulty; — to get over it a favour; — and then the trouble of getting myself costumed for the show; — and then the small value of being driven like the beasts of the field before Adam when he named them. I think I shan't mind it."

to boast of from the attention paid to him by his brethren at Paris than Berryer had in London, I can testify, from having been present at the scene so pompously described, that much was left to be supplied by self-complaisance and imagination. I well recollect regretting that more was not done to testify our sense of the honour conferred upon us by a visit from such a distinguished foreign jurist. We could not have summoned him by a *huissier* with *a wand of ivory*, having no officer with any such emblem of dignity, and it would have been contrary to our customs to have interrupted a jury-trial by the Bar all rising in a body to do homage to any stranger, however distinguished, — were he even a crowned head. But we ought to have taken care that M. Berryer was placed on the bench, by the side of the Judge, whereas he was squeezed in among the barristers; and although several of them spoke to him very courteously, he remained in an inconvenient seat during a tedious trial respecting an act of bankruptcy, which could not be made intelligible to him; and when the jury withdrew to consider their verdict he left the Court, with his "solicitor," almost unnoticed.

Erskine's rencontre with Arthur O'Connor at Paris.

During this visit to Paris, Erskine was placed in a situation of great embarrassment by meeting in society the man whose political principles he had vouched to be exactly the same as his own, and who had since, having confessed his treasons, been banished by Act of Parliament, and had engaged in the military service of France. "At a sumptuous dinner given by Madame Cabarras, *ci-devant* Tallien, to Fox, Erskine, and other distinguished foreigners, to the surprise and displeasure of some, Arthur O'Connor was a guest. Erskine was extremely uneasy, remembering how much he had been deceived in his testimony at Maidstone, and afraid lest evil report should misrepresent this matter in England; but Fox treated it as unavoidable, though unlucky. He spoke to O'Connor as usual."* I confess that this seems to me to have been carrying complaisance to a hurtful extreme, and that Erskine did better by avoiding all conversation with a man who had violated alike the duties of allegiance and of friendship.

* Trotter's Memoirs of Fox.

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A. D. 1802.

Erskine returns to England.

Erskine was well pleased to return to England, and he never again revisited the Continent—not even after the battle of Waterloo, when he might have seen his kilted countrymen encamped in the Champs Elysées, and, clad in tartan, mounting guard with claymore in hand at the Louvre. He was hardly acquainted with any modern language except his own, and he felt a great loss of comfort and of consequence when he found himself in company where that was not spoken. It must likewise be confessed that, although his mind was highly cultivated and his taste exquisitely formed by an intense study of the English classics, he was little acquainted with foreign literature, and he had but a small stock of general political science; so that even with the assistance of an interpreter he was not well qualified to shine in the Parisian salons, notwithstanding his elegant manners, which announced his birth and breeding wherever he appeared.

Erskine's freedom from envy, as exemplified in his praise of Mackintosh's defence of Peltier.

Soon after his return he gave a striking proof of the unenvious disposition, and the generosity to those who might be considered rivals, which distinguished him through life. We were now at peace with France, and Napoleon Bonaparte, made Consul for Life, was acknowledged by us as the Chief Magistrate of that state. On the complaint of his minister,—Mr. Perceval, the Attorney General, had filed an *ex officio* information against Peltier, the editor of the Ambigu, a French newspaper, published in London, for a libel,—and this *cause célèbre* attracted the attention of all Europe. Erskine would have been well pleased with the *éclat* of being counsel for the defendant, and with the opportunity of defending the liberty of the press in England from such an attack upon it by a foreign despot. Yet he heard without repining that this task was intrusted to Mackintosh, and when the day of the trial arrived, instead of sulkily absenting himself, he attended as one of the audience to listen to the author of the VINDICIÆ GALLICÆ, and to countenance and encourage him.* Before going to bed, the admired, though defeated, orator received the following hearty tribute of praise:—

Feb. 21. 1803.

* See 28 St. Tr. 530.

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A. D. 1803.

"Dear Mackintosh,

"I cannot shake off from my nerves the effect of your most powerful and wonderful speech, which so completely disqualifies you for Trinidad or India. I could not help saying to myself as you were speaking, 'O terram illam beatam, quæ hunc versum acceperit, hanc ingratam, si ejecerit, miseram si amiserit.' I perfectly approve of the verdict, but the manner in which you opposed it I shall always consider as one of the most splendid monuments of genius, learning, and eloquence.

"Your's ever,

"T. E."

"Monday evening."

And he felt as he wrote. He was not made wretched by the success of another man in a department in which he himself had succeeded, nor did he incite others to abuse, nor himself descend to anonymous slander, for the purpose of mitigating the anguish of his alarmed vanity. On the contrary, he not only received Mackintosh with a smiling countenance when they met, but, behind his back and in all societies, cordially strove to swell his reputation and to advance his fortune.*

April, 1803. Rupture of the peace of Amiens.

Soon after followed the rupture of the peace of Amiens, and so general was the conviction that this was forced on by the First Consul, that the Whigs almost all joined in openly applauding the recommencement of hostilities, and in the pledge to carry on the war with vigour. According to the Parliamentary History, "Mr. Erskine warmly expressed his sense of the vindictive disposition and proceedings of France. To some parts of the conduct of Ministers in the negotiation and of the address he urged objections; but he assured them of his readiness to contribute at all times and by every method in his power toward the effectual resistance of all aggression either upon the dominion, the interests, or the honour of the country."† The same record informs us that when the Property Tax was first proposed, "Mr. Erskine declared himself

May 23. 1803. Erskine supports the war.

July 5. 1803.

* Life of Sir James Macintosh, vol. i. p. 182. Adolphus, in giving an account of Peltier's trial, says,—"The speech pronounced for him was highly complimented by the most eminent of advocates, and in print it displays a masterly specimen of vigorous conception, glowing description, and powerful reasoning; but in Court it produced no effect, for, without a moment's hesitation, the jury returned a verdict of *guilty*."—Vol. vii. 655.

† Vol. xxxvi. 1386.

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ready to support it—not that he approved of it in principle, but because he was convinced of the necessity of making great exertions at so perilous a moment as the present. He felt it necessary that great sacrifices should be made, and although he felt that his own professional income was not worth above two years' purchase, he would gladly give up any part that could be asked for the general service of the country."*

The volunteers.

The population of this island now exhibited that military spirit which is so well described by Walter Scott in the "Antiquary," which I myself witnessed when a student in the Inns of Court, and which I trust, under similar circumstances, would again blaze forth with equal ardour. Bonaparte was collecting his great armament at Boulogne, with the avowed intention of invading our shores, and he had foolishly exasperated the quarrel, by detaining in custody all British subjects in his power at the renewal of the war,—whereby he in no degree weakened our means of resistance, while he considerably increased among us the rancour against himself, and the readiness to submit to every sacrifice in the hope of being revenged of him. Of the 300,000 volunteers inrolled and disciplined, the lawyers in the metropolis raised two regiments—the B.I.C.A., or Bloomsbury and Inns of Court Association, and the "Temple Corps," generally called "The Devil's Own." The command of the latter was conferred upon Erskine. Having myself served in the ranks of the former, I am not able from personal observation to criticise his military prowess †, but I well remember we heard many stories of the blunders which he committed, and we thought ourselves lucky to be under the orders of Lieutenant Colonel Cox, a warlike Master in Chancery. ‡ While our rivals

Erskine commandant of "The Devil's Own."

* Parl. Hist. xxxvi. 1663.

† I did once, and once only, see him putting his men through their manœuvres, on a summer's evening in the Temple Gardens; and I well recollect that he gave the word of command from a paper which he held before him, and in which I conjectured that his "instructions" were written out as in a *Brief*.

‡ Of the other two most noted volunteer commandants in the metropolis, one had been a Miller, and went by the name of Marshal *Sacks;* and the other actually was a Pastry cook in the city, famous for selling good turtle soup, and he was dubbed Marshal *Tureen*.

could boast of most of the dignitaries of the law, and were renowned for their "*belly-gerent*" appearance *; we consisted chiefly of lean students and briefless barristers †, so that we were in great hopes that if we did go into the field, — before the end of the campaign, fatigue alone would make great openings for us in Westminster Hall, and on all the circuits. We had drills every morning, and many field days, but we never had any harder service than being reviewed by George III. in Hyde Park, along with all the volunteers of the metropolis, on a very rainy day. Both the Law corps were particularly noticed by his Majesty, who caused much jealousy among us of the B.I.C.A., by his particularly gracious return to the salute of Lieutenant-Colonel Erskine. Many severe colds were caught, but there was no casualty to cause any promotion in the profession, the servants of the seniors waiting for them with cloaks and umbrellas as soon as they were dismissed from the parade. Lord Eldon in his old age gave the following account of this spectacle: — "I think the finest sight I ever beheld was the great review in Hyde Park before George III. The King in passing addressed Tom Erskine, who was Colonel, asking him the name of his corps. He answered, 'The Devil's Own.' The Lincoln's Inn volunteers ‡ always went by the name of 'The Devil's Invincibles.'" §

Decline of military order among the volunteers.

Soon afterwards, Bonaparte having broken up his encampment at Boulogne, and marched into Germany, the military ardour of the lawyers greatly subsided; and although Er-

* Law, then Attorney General, afterwards Lord Chief Justice Ellenborough, was reported to be a fair specimen of them; for, even with the help of chalk, he never could be taught the difference between marching with his right or his left foot foremost; and all the time he was in the service he continued in the awkward squad.

† There were likewise a good many attorneys belonging to us, who brought down many jests upon us, — among others, that upon the word being given, "prepare to charge," they all pulled out pen, ink, and paper, and being ordered to "charge," they wrote down 6*s.* 8*d.* or 13*s.* 4*d.* — The soul of our corps was our adjutant, my poor friend Will Harrison, who with us could talk of nothing but battles, and seemed to think himself as great a military genius as Napoleon, although he talked much law at regimental messes, which he was fond of dining at, — so that it was said he was "a General among Lawyers, and a Lawyer among Generals."

‡ Meaning the B. I. C. A.

§ Twiss's Life of Eldon, i. 283.

skine nominally retained the command of his corps, he became remiss in the discharge of his regimental duties — being entirely above the affectation of pretending to a knowledge of strategy, and the folly of "playing at soldiers." *

Question, whether volunteers were entitled to resign before the end of the war?

He now came before the public in a manner much more to his taste. Other civilians, as well as the lawyers, were weary of military manœuvres when the danger of invasion had passed by, and longed to retire; but the Government wished to keep up the force on its present footing, and insisted that they were bound to serve during the war. The Attorney and Solicitor General having given an opinion to this effect, Erskine was consulted, and thus expressed himself respecting the nature and extent of the engagement of volunteers: —

Erskine's opinion.

"If the term *volunteer* is supposed to be satisfied by the original spontaneousness of the enrolment, leaving him afterwards indefinitely bound, then every inlisted soldier must equally be considered to be a volunteer, and with the difference of receiving money, and the local extent of service excepted, would be upon an equal footing, both as to merit and independence. Such a doctrine appears to me to be equally unjust and impolitic, — unjust, because for the volunteer's engagement there is no consideration but the sense of honour and duty, the reward of which is sullied if the service does not continue to be voluntary, — impolitic, because it is overlooking a motive of action infinitely more powerful than the force of any human authority, to take no account of that invincible sensibility in the mind of man for the opinion of his fellow-creatures." He further examined the statutes upon the subject, and came to the clear conclusion that any member of a volunteer corps might resign at pleasure, although while he continued to serve he was subject to military law. The conflicting opinions were published in all the newspapers, and caused general confusion, till the question was regularly brought before the Court of King's Bench, of which Lord Ellenborough was now the dis-

* I know not what he did with his sword when he was made Lord Chancellor. I still preserve my musket, which I mean to hand down as an heir-loom in my family.

tinguished head. The case having been elaborately argued by Perceval the Attorney General on the one side, and Erskine on the other, the Judges unanimously determined in favour of the power of resignation *; and the champion of it was extolled as a great lawyer as well as advocate, if not as a great military commander.

Decision of the Court of King's Bench in Erskine's favour.

The regulation of the volunteer force occasioned much discussion in the House of Commons, and was finally made the subject on which Mr. Addington was turned out of office. In truth, while his intentions were allowed to be excellent, and his private character was above exception, he had not the confidence of any party, and there was a general wish in the nation that the Government should be in abler hands, although the King continued highly pleased with his Minister, and would have much preferred him to Pitt as well as to Fox.

March 19. 1804. His speech on this subject in the House of Commons.

A clause having (contrary to the decision of the Court of King's Bench) been introduced into the "Volunteer Consolidation Bill" to prevent the resignation of voluteers till the conclusion of a general peace, Erskine strenuously opposed it, saying, "The foundation of the decision of the Court of King's Bench was the nature of the service. If a man comes out under arms upon the occasion of an invasion, what is the duration of his engagement? The duration of his engagement is as long as the enemy continues in the country; but that continuance is not necessarily and at all events the same as the duration of the war. From the obstinacy of our enemies, or from a legitimate desire to retaliate upon them, and to reduce their power within safe bounds, we may be obliged to carry on war with them long after all danger of invasion — all apprehension of invasion — has ceased. Till then you may safely trust to that patriotism which has animated the whole population of the country with the desire of fighting for her independence. If there are volunteer corps who wish to extend their services, and to carry arms till the conclusion of a general peace, let them be authorised hereafter to do so; but do not touch the right of

* Rex v. Dowley, 4 East, 512.

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A.D. 1804.

resignation now enjoyed under the solemn judgment of the highest Court in Westminster Hall." The clause was withdrawn.*

Although Erskine continued a member of the House of Commons nearly two years longer, this was his last speech in that assembly.

May, 1804. Mr. Pitt's last Administration.

In a few weeks afterwards Mr. Addington's Administration came to an end, and Mr. Pitt resumed the reins of government, which he held with undivided and uncontrolled power till his death. A Coalition Government had been expected, including Mr. Fox with the "old Opposition" and Lord Grenville with the "new Opposition;" but Lord Grenville would not accept office without Mr. Fox, and the King's prejudice against that statesman could not yet be surmounted. It is very doubtful whether Mr. Pitt used much urgency to gain this end, although, in the very critical state of public affairs, it was generally desired by the nation. I am afraid he was well pleased to find that he had in the Cabinet no one whom he did not consider his creature and dependent. He paid a dreadful penalty for the supremacy he grasped. While planning his new coalition against Napoleon, he was, no doubt, buoyed up by the hope of a successful issue to the contest, which would have placed his name higher than that of his illustrious sire; but after the man whom he hoped to conquer had taken Ulm and gained the battle of Austerlitz, he saw nothing before himself but disgrace and despair; and he not only found that it would be impossible for him much longer to retain his position as Minister, but, notwithstanding our naval triumphs, the safety of the state was endangered by the policy he had pursued. His brave heart was broken, and death relieved him from the mortification of being exposed, in the House of Commons, to the reproaches and sneers of those whose advice and predictions he had despised. Erskine, although he had invariably been opposed in politics to the departed statesman, and had often been the object of his sarcasms, on the present melancholy occasion generously joined with those who only recollected his splendid talents and his

Disasters on the Continent.

Jan. 23. 1806. Death of Pitt.

* Parl. Debates, vol. i. 934.

elevated patriotism, and concurred in voting a public funeral to him, and in granting a sum of money for the payment of his debts.

Dec. 1805.

Death of Mrs. Erskine.

The mind of our illustrious advocate was now softened by deep domestic grief. A few weeks before, he had lost his wife, to whom he was tenderly attached, who had been his faithful companion in his early struggles against penury, and who had enjoyed more than himself the fame and high position which he afterwards achieved. On a tablet erected to her memory in Hampstead Church, he thus recorded her virtues: —

Her epitaph.

"Near this place
lies buried
THE HONOURABLE FRANCES ERSKINE,
the most faithful
and
most affectionate of Women.
Her husband,
THOMAS LORD ERSKINE,
an Inhabitant of this Parish,
raised this monument
to
her lamented memory,
A. D. 1807.*

Formation of the Fox and Grenville Administration. Jan. 1806.

After a feeble attempt to reconstruct the Cabinet under Lord Hawkesbury, who remained Chief only long enough to appoint himself Mr. Pitt's successor as Lord Warden of the Cinque Ports, Lord Grenville was sent for by the King to form a new Administration; and his Majesty, being told that Mr. Fox must be included in it, had the magnanimity to say, "I thought so, and I meant it so; he is a gentleman." †

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* On a marble tablet in the same church is the following inscription in honour of the ninth Earl of Buchan:

"Near this place lies buried
THE RIGHT HONOURABLE DAVID ERSKINE,
EARL OF BUCHAN,
LORD CARDROSS,
LORD AUCHTERHOUSE, &c. &c.
Died October 14th, O. S., A. D. 1745,
Aged 73.
This stone was erected to his memory
by his Grandson,
THOMAS LORD ERSKINE,
an Inhabitant of this Parish."

† On the authority of Lord Grenville, who related the anecdote to the late Earl of Essex.

CHAP. CLXXXIII.

Feb. 1806.

Difficulty as to the Great Seal.

The chief difficulty experienced was in disposing of the Great Seal. Lord Eldon, if he had been willing to retain it, could not possibly be allowed to sit in the new Cabinet, the overthrow of which, whether in or out of office, all foresaw that he would unscrupulously plot. The offer of it was made to Lord Ellenborough, who declined it, as he could not run the risk of the proposed exchange on account of his large family, and to Sir James Mansfield, Chief Justice of the Court of Common Pleas, who pleaded his advanced age.

It is offered to Erskine.

Lord Grenville and Mr. Fox then asked the King's permission to offer it to Mr. Erskine — when his Majesty exclaimed, "What! what! Well! well! — but, remember, he is your Chancellor, not mine." I am afraid that the royal objection arose from the recollection that he not only had always professed and acted upon Whig principles, but that by his eloquence he had defeated many prosecutions which his Majesty had deemed necessary for the public tranquillity. Had the King been aware (which could hardly be expected) of the professional qualifications necessary for a Chancellor, and this had been the source of his reluctance, he ought to be honoured for his discernment.

Character of this appointment.

I must confess that the appointment was not justifiable — being prompted by political convenience, and not by a due regard to the administration of justice in the Court of Chancery. The mere circumstance of a barrister having practised chiefly in the courts of common law, I hold to be no disqualification for the office; and, on the contrary, I think he is likely to fill it more for the public benefit than a man reared in an equity draughtsman's office, who has never attended a circuit or quarter-sessions, and has exclusively employed his days and nights in drawing bills and answers, and conning over equity practice. If Erskine had been well versed in the civil law, — if he had scientifically studied general jurisprudence, — if he had been in the habit of pleading at the bar of the House of Lords, — and if he had been initiated in equity proceedings, by having been occasionally retained in great cases in the Court of Chancery, — he might have been expected to turn out as great an Equity Judge as Lord Eldon

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himself, who always ascribed his own proficiency to the circumstance that he began with the common law. But unfortunately, Erskine was only a clever *nisi prius* pleader, and although he had sufficient acuteness to be made to understand any legal question, however abstruse, he was only familiar with the rules of evidence, and the points likely to occur in the conduct of a cause before a jury, or in the common routine of a King's Bench leader in banco. I doubt whether he had ever opened the Institutes of Justinian, or glanced at the codes of any of the continental nations, and he could hardly go so far as Lord Holt, who said, that "I have been counsel in *one* equity suit, which I lost;" for in his time, the equity leaders having been well drilled in common law, the custom had not begun, which has become very usual since, of calling in upon important occasions the assistance of the common law leaders. Erskine, declining to accept briefs in the House of Lords, or before the Privy Council, had seldom to travel beyond the Term Reports and Buller's Nisi Prius. He could hardly have expected to be an adequate successor of Lord Nottingham, Lord Somers, and Lord Hardwicke; and, if he had consulted his own comfort and his own glory, he would have declined the offer, however tempting it might appear to vulgar men. Better would it have been for him to accept the office of Attorney General, in the expectation that a common law chiefship might become vacant, the duties of which he might have adequately performed, or to have been contented with being by far the first advocate who had ever practised at the English Bar—a position more enviable than that of an indifferent Chancellor, notwithstanding the precedence and the power which the Great Seal confers. In an evil hour he yielded to the temptation of "the pestiferous lump of metal"* which has proved fatal to so many; and, ere long, from being the "beheld of all beholders," he sunk into comparative insignificance. He cannot be accused of having deserted his party, or ever done a dishonourable or mean act to obtain it. When Fox was Prime

Erskine accepts it.

* Roger North.

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Romilly's account of this transaction.

Minister, nothing could be more natural than that Erskine should be Chancellor. Politically, the arrangement was laudable; but, judicially, it was not to be defended. Romilly in his Diary, speaking of the new Administration, says, "There are some few appointments which have been received by the public with much dissatisfaction, and none with more than that of Erskine to be Lord Chancellor. The truth undoubtedly is, that he is totally unfit for his situation. His practice has never led him into Courts of Equity; and the doctrines which prevail in them are to him almost like the law of a foreign country. It is true that he has a great deal of quickness, and is capable of much application; but, at his time of life, with the continual occupations which the duties of his office will give him, and the immense arrear of business left him by his tardy and doubting predecessor, it is quite impossible that he should find the means of making himself master of that extensive and complicated system of law, which he will have to administer. He acts, indeed, very ingenuously on the subject; he feels his unfitness for the office, and seems almost overcome with the idea of the difficulties which he foresees that he will have to encounter. He called on me a few days ago, and told me that he should stand in great need of my assistance, that I must tell him what to read, and how best to fit himself for his situation. 'You must,' these are the very words he used to me, 'You must make me a Chancellor now, that I *may afterwards make you one*.'"*

* Memoirs, ii. 128.

CHAPTER CLXXXIV.

CONTINUATION OF THE LIFE OF LORD ERSKINE WHILE HE WAS LORD CHANCELLOR.

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Transfer of the Great Seal from Eldon to Erskine.

THE transfer of the Great Seal took place at the Queen's Palace on the 7th of February, 1806, when, being delivered up by Lord Eldon, his Majesty *multa gemens* put it into the hand of Erskine, declaring him Lord Chancellor of Great Britain, and directed him to be sworn of the Privy Council. The same day the new head of the law was created a Peer of the United Kingdom, by the title of Baron Erskine of Restormel Castle, in the county of Cornwall, this locality being designated as a mark of favour by the Heir Apparent, because it was the ancient residence of the Princes of Wales.

Address of the Bar to Erskine on this elevation.

The following day an honour was conferred upon him by which, I make no doubt, he was far more gratified. A meeting of the Bar was held in Westminster Hall, and although a vast majority of those present were high Tories, the following resolution was carried unanimously: —

"That we cannot deny ourselves the satisfaction of presenting our sincere congratulations to the Rt. Honble. Thomas Lord Erskine on his appointment to the office of Lord High Chancellor of Great Britain, and of expressing the deep impression made upon us by the uniform kindness and attention which we have at all times experienced from him during his long and extensive practice amongst us; and we farther beg leave to assure his Lordship that in retiring from us he is accompanied by our best wishes for his health and happiness."

This being presented to him in the name of the Bar, by the two senior barristers, the following was his reply: —

His answer.

"GENTLEMEN,

"I cannot express what I felt upon receiving your address, and what I must ever feel upon the recollection of it. I came ori-

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ginally into the profession under great disadvantage. Bred in military life, a total stranger to the whole Bar, and not entitled to expect any favourable reception from similar habits or private friendships, my sudden advancement into great business before I could rank in study or in learning with others who were my seniors also, was calculated to have produced *in common minds* nothing but prejudice and disgust. How, then, can I look back without gratitude upon the unparalleled liberality and kindness which for seven and twenty years I uniformly experienced among you, and which alone, I feel a pride as well as a duty in acknowledging, enabled me to surmount many painful difficulties, and converted what would otherwise have been a condition of oppressive labour into an uninterrupted enjoyment of ease and satisfaction? I am happy that your partiality has given me the occasion of putting upon record this just tribute to the character and honour of the English Bar. My only merit has been, that I was not insensible to so much goodness. The perpetual and irresistible impulses of mind, deeply affected by innumerable obligations, could not but produce that behaviour which you have so kindly and so publicly rewarded. I shall for ever remain,

"Gentlemen,

"Your affectionate and faithful humble servant,

"ERSKINE.

"Lincoln's Inn Fields, Feb. 9. 1806." *

Considering how political enmities and private jealousies oppose such an expression of good will to a barrister on his elevation to the woolsack, we need not wonder that this is a solitary instance of it in the annals of our profession, and we may form some conception of the fascinating manners and real kindness of heart, as well as of the brilliant genius, which called it forth.

His "Supporters" and "new Motto."

I must, however, relate that he caused a good deal of merriment in Westminster Hall, by the heraldic honours which, on his own suggestion, were accorded to him. Retaining his family shield and crest, he had for supporters "a Griffin, wings elevated, gules charged with a mullet, and a Heron, wings mounted, holding in the beak an eel proper,"

* Annual Register, 1806, p. 363.

(on which many jokes were made)*, and he took for his motto, "TRIAL BY JURY." That of his father being "JUDGE NOUGHT," all allowed that it would not have been very appropriate, but it was said that "BY BILL IN EQUITY" would have been a better substitution on his going into the Court of Chancery, and that "Trial by Jury" was a vain imitation of Lord Camden's motto from Magna Charta, "Judicium Parium, aut Lex Terræ." †

Feb. 12. He is installed in the Court of Chancery.

He took his seat on the woolsack on the 10th of February ‡, and on the last day of Hilary Term. Lord Chancellor Erskine, seated in a state carriage, adorned with this blazonry, rode in grand procession from his house in Lincoln's Inn Fields to Westminster Hall, accompanied by his Royal Highness the Duke of Clarence, afterwards William IV., many peers and privy councillors, and all the Judges and King's counsel. The oaths were administered to him with due solemnity, and he commenced his judicial career. §

* The Buchan supporters were two ostriches.

† Soon after, a barrister whom I knew well, setting up his carriage, — in still worse taste put upon the panels, "Causes produce Effects," — equal to the tobacconist's "Quid rides," or the water-doctor's ducks crying *Quack! quack!*

‡ The following is the copy from the Lords' Journals on his taking his seat as a peer: —

"10th Feb. 1806. — His Royal Highness the Duke of Clarence acquainted the House 'That his Majesty had been pleased to create the Right Honourable Thomas Erskine, Lord Chancellor of that part of the United Kingdom of Great Britain and Ireland called Great Britain, a Peer of these realms.'

"Whereupon his Lordship, taking in hand the purse with the Great Seal, retired to the lower end of the House, and having there put on his robes, was introduced between the Lord Holland and the Lord Rawdon (also in their robes), the Yeoman Usher of the Black Rod, Garter King at Arms, and the Earl Marshal preceding.

"His Lordship laid down his patent upon the chair of state, kneeling; and from thence took and delivered it to the clerk, who read the same at the table.

"Then his Lordship at the table took the oaths, and made and subscribed the declaration; and also took and subscribed the oath of abjuration, pursuant to the statutes.

"Which done, his Lordship took his seat at the lower end of the Baron's bench; from whence he went to the upper end of the Earl's bench, and sat there as Lord Chancellor, and then returned to the woolsack."

§ "12th February, 1806. — John Lord Eldon, Lord High Chancellor of that part of the United Kingdom of Great Britain and Ireland called Great Britain, having delivered the Great Seal to the King at the Queen's Palace on Friday, the 7th day of February, 1806, his Majesty the same day delivered it to the Honourable Thomas Erskine, with the title of Lord High Chancellor of Great Britain, who was then sworn into the said office before his Majesty in Council; and on Wednesday, the 12th day of February, 1806, being the last day of Hilary

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Handsome conduct of the Equity Bar.

The Equity Counsel behaved to him with great liberality. He had been in the constant habit of jeering, although in a good-natured way, at their complicated and interminable proceedings, which he contrasted with the simplicity and despatch of the Common Law. They had been often taunted in society with his pathetic appeal to Lord Kenyon, who recommended that his client should apply to Chancery for relief,—"Would your Lordship send a dog you loved there?"* and the answer was handed about which he had lately given to a question connected with equity: "My opinion is, that the present case should be sent to some gentleman conversant with this branch of practice." Yet they not only behaved to him with much respect and courtesy, but abstained from seeking to derive any unfair advantage from his inexperience, and showed a general disposition to keep him out of "*scrapes*." His demeanour, in his new office, to all who approached him, was so noble and so benevolent, that it conquered all prejudices, repressed the natural ebullitions of envy and of selfishness, and created an emulation of reciprocal good feeling. He continued all the officers of his predecessor in their situations; he did not dismiss one commissioner of bankrupts †; and as, by a combination of independence and deference, he had been a model of what is due to the Court from an advocate, he now, by his uniform patience, impartiality, firmness, and politeness, showed what is due from a Judge

Demeanour of the new Chancellor.

Term, he went in state from his house in Lincoln's Inn Fields to Westminster Hall, accompanied by the Judges, King's Serjeants, King's Counsel, and several other persons. The Lord Chancellor proceeded into the Court of Chancery, where, before he entered upon business, in the presence of his Royal Highness the Duke of Clarence and several other peers, he took the oaths of allegiance and supremacy, and the oath of Chancellor, the same being administered by the Deputy Clerk of the Crown, his Honour the Master of the Rolls holding the book, and three other Masters being present; which being done, the Attorney General moved that it might be recorded. Then his Royal Highness and the other Lords departed, leaving the Lord Chancellor in Court."—*Min. Book*, No. 2. fol. 80.

* The proper pendant to this sarcasm is the advice given to send a dog that could not be confined at home, and went astray doing mischief, into the Court of Chancery, "for no living thing once there can ever get out again."

† This was in the time of the "Septuagint," or Seventy Commissioners, who were all removable at pleasure. I was then a student of law, and having had a promise of a commissionership from the new Chancellor in respect of his friendship for my father, felt disappointed, like other expectants, that there was not a "*scratch*"—or turning out of those who were wealthy and inefficient.

to the Bar. As to higher qualifications, he was not only above all suspicion of corruption, but most devotedly anxious that full justice should be done to all the suitors who came before him; and while he sat in Court, notwithstanding his love of desultory amusement, he rigidly confined his attention to the business in hand, however irksome it might be, and however dull and boring the counsel who treated it. There lie before me many quarto volumes of notes which he took during his short tenure of office, proving that he had assiduously listened to, and laboured to understand, all who addressed him, — there being as large a space allotted to the plodding draughtsmen as to Romilly and Perceval. I expected to extract some amusement from the mass; but, to my disappointment and his credit, I cannot discover a single humorous sally in the whole series of his note-taking labours. When a sixth counsel was creeping over the oft-trodden ground, still he had not relieved the tedium he must have felt by penning an epigram, or drawing a caricature, in the margin of his note-book.

Further, he was not only very quick, but very cautious; and he had the discretion, on most occasions, to say little, notwithstanding his general love of talking — recollecting, that although his judgment might be right, there was serious danger of his reasons being wrong.

His defects

But here my commendation of him as a judge must cease. Well aware of his own deficiency in the professional knowledge requisite for the satisfactory discharge of his duty, he took no pains to supply it; and the examples of Lord Nottingham and Lord Hardwicke, who, though far better prepared, had entered on a laborious course of study when they received the Great Seal, were unknown to him, or neglected by him. Being entirely unacquainted with the law of real property, which is so peculiarly essential in a Court of Equity, he did purchase a copy of the most popular Digest upon this subject; and being caught with a volume of it under his arm, he said, "he was taking a little from his *Cruise* daily, without any prospect of coming to the end of it." But I cannot find that he made any systematic or

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vigorous effort to initiate himself in the doctrines of equity; and, on the contrary, I have been told that, finding he got on more smoothly in the Court of Chancery than he expected, he undervalued the difficulties of his situation, and was not much dissatisfied with his own qualifications and his own performances. Gratifying Hargrave with a silk gown, he got this deep though dull lawyer to work out the authorities for him; and, with such assistance, he thought himself equal to most of his predecessors.

None of his decrees reversed, and only one appealed against.

He had to boast that "there was only one of his decrees appealed against, and this was affirmed." From the peculiar nature of the jurisdiction of the Court of Chancery, however, the test of appeals and reversals very inadequately tries the merits of a Chancellor. A court of appeal is very reluctant to take a different view of facts from the Judge below; and in the course of an equity suit, there is often a difficulty in raising a question of law so distinctly as that it may be submitted to a superior tribunal. However erroneous the vulgar notion that an Equity Judge may do what he likes according to his own notions of natural justice, there is often much left to his discretion, and his decree is not to be altered unless it be erroneous. Had Lord Erskine presided only the same length of time in the Court of King's Bench as in the Court of Chancery, although he certainly would have done his work infinitely better, there probably would have been many writs of error from his judgments, and some of them would have been reversed.

His reported decisions.

The decisions "Tempore Erskine" are to be found in the 12th and 13th volumes of the Reports of Vesey, junior. I believe that little bad doctrine is to be found in them; but although they are not to be "*tabooed*," or denominated the "APOCRYPHA," as some coxcombical equity practitioners have proposed, it must be admitted that, generally speaking, there is a great tenuity about them; that, if they do not do injustice to the parties, they lay down few useful rules; and that, if they do not disturb, they do little to advance, our equitable code. In the whole series of them I do not think that there is once any allusion to the civil law or foreign

jurists; and the illustrations are drawn from NISI PRIUS more frequently than from the general principles established by the successive occupiers of the "MARBLE CHAIR." Luckily for the public, the office of Master of the Rolls was at this time held by Sir William Grant, who comes up to the highest notion that can be formed of judicial excellence.

I will try to select a few of Lord Erskine's decisions which are most likely to interest the general reader.

Copyright in "Directories."

In *Matthewson* v. *Stockdale* *, the question arose, whether there was a copyright in a compilation entitled "East India Calendar or Directory," objection being made that it afforded no scope for a display of literary merit, and that the same materials were open to all mankind. — *Lord Chancellor.* "In the case of Dr. Trusler's Chronology, all the remarkable events, the accounts of eminent persons, every matter of curiosity and interest, were subjects of information past and gone by, — which could not be altered. All human events are equally open to all who wish to write an original work. No man can monopolise such a subject. Therefore Dr. Trusler would have had no right to complain of another who employed his mind in a new compilation, endeavouring to make additions and improvements. But it was stated by the Court, that if the defendant's work was a copy from the other, with alterations merely colourable, Dr. Trusler was entitled to a verdict; and finally he obtained a decision in his favour. Then came the case of a map of St. Domingo, attached to the work of the late Mr. Bryan Edwards. The defendant said, 'How can there be copyright in a map of the Island of St. Domingo? Must not the mountains have the same position — the rivers the same course? Must not the points of land — the coast connecting them — the names of places — everything constituting a map, be the same in every map which is accurate?' The answer was, that the subject of the plaintiff's claim was a map made at great expense, from actual surveys — distinguished from former maps by improvements which were manifest; while the defendant's map was a servile imitation

* 12 Ves. 270.

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of it, requiring no ingenuity or expense beyond engraving on a plate of copper a copy of the original.—When I was at the Bar, I unsuccessfully resisted an action for pirating a chart of the English Channel — urging that the latitude and longitude of the several points on the adjoining shore, and the soundings, must be in all charts as they are fixed by nature. So Cary, the author of the 'Road Book,' succeeded against Patterson's imitation of it, which was shown to have extended to its blunders,— the beautiful place in the Isle of Wight called *the Priory* being stated by the defendant, as well as by the plaintiff, to belong to Mr. Justice GRO, instead of Mr. Justice GROSE. There is no copyright in the title of 'East India Calendar;' but if a man, by considerable expense and labour, has procured all the names and appointments on the Indian establishment, he has a copyright in that individual work. I have compared these books, and find that, in a long list of casualties, removals, and appointments, there is not the least variation even as to situation in the page. Upon such evidence, in a court of law, there would hardly be anything to try; and though I do not approve extending copyright too far, I am bound, under these circumstances, to continue the injunction to the hearing."

Relief against forfeiture of a lease for breach of covenant.

In *Sanders* v. *Pope*, he granted relief against the forfeiture of a lease for breach of a covenant to lay out a specific sum in repairs in a given time, where compensation can be made to the landlord: "There is no branch of the jurisdiction of this Court more delicate," said he, "than that which goes to restrain the exercise of a legal right. That jurisdiction rests only upon this principle, that one party is taking advantage of a forfeiture, and as a rigid exercise of the legal right would produce a hardship, while the other party may have the full benefit of the contract as originally framed, the Court will interfere. In the common case of a covenant in a lease to pay rent — with a clause of forfeiture for non-payment, equity is in the constant course of relieving the tenant, the rent and all expenses being paid, although the failure to pay at the day did not arise from accident or disease. I think the case rests on the same principle, for the landlord may be

placed in the same situation as if the covenant had been strictly performed." *

Doctrine of incompetency to make a will by reason of insanity.

In *White* v. *Wilson*, he laid down the law very distinctly upon the delicate and difficult subject of incapacity to make a will by reason of insanity. An issue having been directed to try the validity of the will of Lord Chedworth, it appeared that for many years he had acted as chairman of Quarter Sessions, and had attended and voted in the House of Lords — although there were some suspicions as to his sanity, from the eccentricity of his manner and singularity of his dress. The jury found for the will; but a motion was made for a new trial upon an affidavit of Dr. Parr, expressing his opinion that the testator had never been of perfectly sound mind. On the other side, several letters from Dr. Parr to the testator were produced, consulting his Lordship on subjects of literature, expressing in strong terms an opinion of his taste and talents, and, in one instance, recommending a clergyman for a living in his Lordship's gift.—*The Lord Chancellor*. "The rule upon this subject I take to be, that where the party has been subject to a commission, or to any restraint permitted by law, even a domestic restraint, clearly and plainly imposed upon him in consequence of undisputed insanity, the proof is thrown upon the side which maintains his sanity. On the other hand, where insanity has not been imputed by relations or friends, or even by common fame, the proof of insanity is thrown upon the other side — and it is not to be made out by rambling through the whole life of the party, but must be applied to the particular date of the transaction. A deviation from that rule will produce great uncertainty. In such a case as this, therefore, it must be shown that a man exercising all these great public duties, which it was proved this testator did exercise, had nevertheless a morbid image in his mind upon a particular subject, wide from sound understanding and clear reason. In my experience I know only one instance of a verdict of lunacy under such circumstances — that of Mr. Greenwood, who

* 12 Ves. 289. This judgment, however, has been much questioned. See 10 Ves. 70.; 12 Ib. 334.

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was bred to the bar, and, like Lord Chedworth, acted as chairman at the Quarter Sessions, but becoming diseased, and receiving in a fever a draught from the hand of his brother, the delirium connected itself with that idea, and he considered his brother as having given him a potion with a view to destroy him. He recovered in all other respects; but that morbid image never departed, and that idea appeared connected with the will by which he disinherited his brother. Nevertheless, it was considered so necessary to have some precise rule, that though a verdict had been obtained in the Court of Common Pleas against the will, the Judge strongly advised the jury to find the other way, and they did accordingly find in favour of the will. Further proceedings took place afterwards, and concluded in a compromise. But is this case of that sort? Is there any evidence of a morbid image in the mind of this testator, connected with his will, or at any other period? Dr. Parr, when he speaks of specific facts, is obliged to go back to the time when they were boys together at Harrow, and appears afterwards to have had a high opinion of his discrimination and good sense." A new trial was refused.*

Distinction between lunacy and disability from age.

In the case of *Exparte Cranmer*, he made several other striking observations on the law of lunacy, which he had much considered. Under a commission to inquire whether Henry Cranmer, Esq., was a lunatic? the jury found "that he is so far debilitated in his mind as to be incapable of the general management of his affairs," the fact being that his faculties were in a state of great decay from old age. —*Lord Chancellor.* "There ought to be an Act of Parliament to authorise the Chancellor to deal with a case of this kind in a different fashion. Unless the party be expressly declared to be a lunatic, or of unsound mind, I have no jurisdiction; but I feel, as Lord Eldon seems to have felt, that persons who are above all others entitled to protection, ought not to go unprotected. A man may have passed a useful and illustrious life, and by the course of nature his faculties may decay, so that he may not be fit either to govern himself or his affairs; it is unseemly that he should be put upon the footing of a

* 18 Ves. 69.

lunatic, and that in the ordinary course a commission should issue against him, which in after times may affect the fortunes of his posterity. He ought to have the guardianship of the Court in his second infancy as he had in his first. If it falls to the King, by his prerogative, to take care of those who cannot take care of themselves, and I have jurisdiction,—at all events there must be a congruity between the commission and the finding. The verdict must either be in the words of the commission, or in equipollent words. The jury cannot find a special verdict referring the question to the Court, and saying, 'Whether he be a lunatic or not we cannot tell, but we refer it upon the evidence to the Court.' I have no authority to act upon his liberty or his property except under a legal verdict. I make no doubt that I have jurisdiction in a case like this, if the proceedings are regular. Lord Coke considers the word 'lunaticus' as by no means material, only classing it with '*amens*,' '*demens*,' &c., and there is no doubt that the moon has no influence over lunatics.* The commission was quashed, with directions that another commission should issue." †

Purcell *v.* M'Namara. Romilly's account of it.

Soon after, a case came before him which excited great public interest, and of which we have the following account from Sir Samuel Romilly: strongly characteristic both of the judge and the reporter. "A bill was filed some time ago by a lady of the name of Purcell against John M'Namara, to set aside several deeds conveying to him a moiety which she was entitled to of a very valuable estate in the island of Tortola, as having been obtained from her by advantage taken of her ignorance, and an abuse of the confidence she had reposed in him. The cause was heard by Lord Eldon when Chancellor, and he decreed that all the deeds should be delivered up by M'Namara to be cancelled, and that he should pay the costs of the suit. As soon

* Vesey, jun. represents this as *a point of law* decided by Lord Erskine; and puts in the margin of his report, "In cases of lunacy, the notion that the moon has an influence, is erroneous." To complete the *ridicule*—at which, were it not for his simplicity, one would suppose that he had maliciously aimed,—he put in his index, "LUNATIC, see LORD CHANCELLOR."

† 12 Vesey, jun. 445—457.

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as the present Chancellor succeeded to the Great Seal, M'Namara petitioned to have the cause reheard. It seems that he had in early life been an acquaintance of the Chancellor's; and he had the folly to boast that he should certainly obtain a reversal of the decree, and to invite his friends to come and witness his triumph. The Chancellor, not choosing to trust himself with the sole decision of the cause, or thinking that there might be considerable difficulty in the case, desired the Master of the Rolls to assist him. During the first two or three days of the cause being reheard, the Chancellor, with great rashness, expressed a very strong opinion that the decree could not be supported. The Master of the Rolls, after his usual manner, remained perfectly silent. In truth, the Lord Chancellor did not, at the time he discovered his opinion, at all understand the cause, nor had he then heard of some of the most important facts in it; for M'Namara's counsel began, and, as might be supposed, did not open a very strong case against their own client. When he had heard the counsel for Miss Purcell, and talked with the Master of the Rolls upon the case, he became sensible that it was impossible to reverse or even to alter the decree. In truth it was a very gross case, in which M'Namara, under pretence of rendering service to the plaintiff, her brother and her sister, had obtained from them a conveyance of every thing they were possessed of, and had reduced them to subsist upon small annuities received from himself, and for which he compelled the plaintiff to sign receipts, acknowledging that she had no right to her annuity, but owed it to his generosity and charity. The decree was affirmed."*

Judgment in Purcell v. M'Namara.

Lord Chancellor Erskine's judgment is not given by Vesey, but there is a copy of it extant, which shows that he at last

* Life of Sir S. Romilly, ii. 166. During the argument at the bar, Mr. M'Namara sent a challenge to Sir Samuel, who very properly declined it, for he had strictly confined himself within the discharge of his professional duty. "M'Namara," says Romilly, "who had been concerned in the course of his life in several duels, had vainly attempted during the hearing of the cause to intimidate Miss Purcell's counsel from doing their duty. Some years afterwards, having recovered from a very dangerous illness, he wrote a letter to a friend of mine, in which, after telling him how near dying he had been, he added, 'but I was prepared to meet the event *like a man of honour*.'"

was complete master of the case, and that he was very anxious to decide it justly. Thus he began: — "I had not, I believe, sat here quite a week, when a petition was presented to me to re-hear this most important cause. And when I recollected that it had been heard at great length — that it had been pleaded by counsel of eminence who are not now at the Bar, having been since raised by his Majesty's favour to seats on the benches of justice — that the decree under review was pronounced by a noble and learned lord who had spent the greatest part of his professional life in the practice of this Court, and presided in it for several years with so much reputation,— and when I considered the example of those who have adorned the place which I now fill, I thought it highly incumbent on me to pursue that course, of asking the assistance of his Honour the Master of the Rolls, to which I am entitled by the jurisdiction and constitution of this Court on difficult and complicated points, in the same manner as when any question of law mixes in the consideration of any subject before the Court, I am entitled to the assistance of the learned Judges. In the present case, I have another reason for pursuing this course. I have had occasion more than once to remark that, consistently with the habits of English life and manners, a Judge who is to administer justice cannot be always a stranger to the contesting parties, and whenever the decisions of the Courts of Common Law respect facts, this consideration renders the trial by jury of such inestimable value. Of the plaintiff in this cause I know nothing. From the evidence, she appears to be a woman friendless and unprotected. She was a total stranger to me till this cause presented itself in Court. With the defendant, it is quite otherwise; I have known him all my life; I have a particular acquaintance with him, and certainly I have always had great good will towards him: and therefore, though I have that confidence in myself which it may be indecent to express, and though my judgment was not likely to be surprised, yet, as it might have turned out that it might be my duty to reverse that decree, — not from any thing personal to myself, but that the character of English justice might stand pure and unsus-

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pected, I wished to be assisted, as I have been, and I return my thanks to the Master of the Rolls for the learned opinion which he has delivered. But, greatly as I am bound to respect his Honour, if I had not agreed with him, I should have paused, and taken time to consider; for the judgment must be mine, and I am responsible for the justice or injustice of it." He then entered very elaborately into the evidence, and came to the clear conclusion that the deeds were fraudulent, and must be set aside.

Application to commit for a contempt of Court.

The following day there appeared in the newspapers a report of the case, furnished by M'Namara, misrepresenting the facts, the arguments of counsel, and the judgment of the Court—representing the suit to have originated in a shameful conspiracy between the plaintiff, her attorney, and a discarded steward of the defendant, to destroy his character. "So scandalous an attempt on the part of M'Namara," wrote Sir Samuel Romilly in his Diary, "to impose on the public, to convert the proceedings of a court of justice into a vehicle of calumny, and to draw down the infamy which belonged to himself upon the heads of his victims, called for the severest animadversion; and, as counsel for Miss Purcell, I moved the Court that M'Namara, and the person whom he had employed and paid to draw up the account, should be committed for a contempt of the Court. I represented to the Chancellor, in the strongest way that I could, the hard situation in which the suitors, witnesses, and solicitors in his Court must be placed, if he could not protect them against such libels. I pressed him to consider how much the preservation of the liberty of the press depended upon not suffering such an abuse to pass unpunished. I represented to him how much the offence was aggravated by the condition of the parties, who did not now even pretend that the account published was meant to be accurate; who attempted no apology, expressed no contrition, offered no atonement; but, already anticipating, as it were, their triumph over the Court, contended that they had done no more than they had a right to do; and pretty clearly intimated that they were ready to misrepresent the future proceedings of the Court, just as

they had misrepresented the past. I called upon him to assert the honour of his situation; and I ventured to tell him that, although he would probably be disposed to disregard an indignity offered to himself, he should consider how much others, how much all his Majesty's subjects, were interested in his maintaining the respect due to the High Court in which he presided. I added, that as there could be no doubt that his office had become more honourable and dignified in passing through the hands of the Somers, the Talbots, the Hardwickes, the Camdens, and his other illustrious predecessors, so it would be transmitted by him undiminished in splendour and dignity to his successor. When I concluded, the Chancellor immediately delivered his opinion. The Court was extremely crowded, for a good deal of interest and curiosity had been excited to see how he would conduct himself. He said that there could not be any doubt of the authority of the Court to commit in such a case; that the fact of M'Namara being the publisher was clearly established, and the article was a gross misstatement of the proceedings of the Court, and was manifestly printed for the purpose of exculpating the defendant in the public opinion, and of rendering odious his opponents. After dilating on these topics at considerable length, and raising an universal expectation of the only decision which it was supposed possible could follow such a speech, he added, that, 'though this was certainly a case in which the Court might commit the offenders as for a contempt, it still remained to be considered whether, in the exercise of the discretion which the Court must necessarily have in such a case, it ought to do so, and that, exercising that discretion, he would certainly *not* commit them.'" Romilly goes on to state, that a proposal being made that the papers should be laid before the Attorney General, with a view to a prosecution for a libel, Lord Erskine sent for Miss Purcell's solicitor, to discourage any such proceeding, and adds, "This conduct of the Chancellor, to a person not well acquainted with his character, must seem incomprehensible; for myself, I have no doubt that it has not proceeded from regard to M'Namara, but merely from the fear of losing or

endangering that vulgar popularity which he values a great deal too highly." Romilly observes in a note, "Having since had occasion to consider the subject of contempt of court much more fully than I had then done, I greatly doubt whether I was right in that opinion, and whether, gross and flagrant as the misrepresentation of the proceedings of the Court in this cause was, it ought not to have been left to be prosecuted as a libel." But he brings forward a serious charge of inconsistency against Lord Erskine: "The Chancellor was so sensible of the loss of reputation which he has sustained by this, that about ten days after, upon a complaint against a man and his wife for a publication relative to the proceedings of the Court in a lunacy, he immediately committed them and their printer to the Fleet, although the case was much less flagrant than that of M'Namara." * This was *Exparte Jones* †, where, pending a petition to remove the committee of a lunatic, an application was made against the committee and his wife and other persons, as the authors, printers, and publishers of a pamphlet on lunacy, with a dedication to the Lord Chancellor reflecting on the conduct of the petitioners. — *Lord Chancellor.* "As to remedy at law, the subject of this application is not the libel against the petitioners. Whatever may be said as to a constructive contempt through the medium of a libel against persons engaged in controversy in the Court, it never has been or can be denied that a publication, not only with an obvious tendency, but with the design to obstruct the ordinary course of justice, is a very high contempt. Lord Hardwicke considered persons concerned in the business of the Court as being under the protection of the Court. But without considering whether this is or is not a libel upon the petitioners, what excuse can be alleged for the whole tenor of this book? Stripped of the dedication, it could be published with no other intention than to obstruct the course of justice, and to bring into contempt the orders which the Court has made. But in the dedication, the object is avowed to influence the decision of the Court in

* Life of Romilly, ii. 172.

† 13 Ves. 237.

the particular case, to obtain a decision contrary to the established rules of the Court, and, by flattering the Judge, to taint the source of justice. Let the committee and his wife and the printer be committed to the Fleet prison." * Notwithstanding the harsh observation of Romilly, I am not at all clear that the two decisions may not be reconciled, as the publication in the former case might be considered only a libel on individuals, and in the latter case it was a direct obstruction to the administration of justice.

Essential difference between real and personal property.

There is at present a disposition to attempt to do away all distinction between the transfer of real and personal property, in forgetfulness of the essential difference between the two, which ought ever to be had in remembrance. This is well expressed by Lord Chancellor Erskine in the case of *Hiern* v. *Mill* †, on the effect of notice of a prior incumbrance to a purchaser. "The law distinguishes between a real estate and a personal chattel. The latter is held by possession,—a real estate by title. Possession of a real estate is not even *primâ facie* evidence of title; it may be by lease or at will, or by sufferance, and real property cannot answer the purposes of society, unless various interests may be carved out of it, which can only be evidenced by writing." ‡

Thelluson v. Woodford.

The great boast of Lord Erskine's Chancellorship was his decision in *Thelluson* v. *Woodford*. The famous will of Peter Isaac Thelluson contained this clause:—"In case I shall in my lifetime enter into any contracts for the purchase of any lands, and I shall happen to die before the necessary conveyances thereof are executed, I order and direct that all such contracts so entered into by me, shall be completed and carried into execution by my said trustees after my death, and that the purchase monies shall be paid by them by, with, and out of my personal estate, and that the conveyances thereto shall be made to them, their heirs and assigns, and that they shall be seised and possessed of the premises so to be conveyed on the same trusts as are by this my

* 13 Ves. 240. † Ib. 119.

‡ Possession never can be the evidence of title to real estate; but I hope that before long no deeds affecting real estate will have any validity unless they be registered.

will created, concerning the estates directed to be purchased in manner aforesaid." The testator, after making his will, and within a month before his death, had contracted for the purchase of real estates to the amount of 30,000*l.* These estates, as the law then stood, could not pass by the will, and vested in the heir at law; but the trustees contended that, according to the doctrine of "*election*," he must renounce all benefit under the will, or let the devise take effect.—*Lord Chancellor.* "I give the judgment which I find myself bound to pronounce, with some reluctance,—considering this will as dictated by feelings not altogether consistent with convenience. But this appears to me to be a case of *election.* The jurisdiction exercised by this Court compelling election, may be thus described:—'A person shall not claim an interest under an instrument, without giving full effect to that instrument as far as he can.' If, therefore, a testator intending to dispose of his property, and making all his arrangement, under the impression that he has the power to dispose of every thing made the subject of his will, mixes in his disposition property that belongs to another person, or property as to which another person has a right to defeat his disposition, giving to that person an interest by his will,—that person shall not be permitted to defeat the disposition, and yet take under the will. The reason is, the implied condition that he shall not take both, and the consequence is, that there must be an *election;* for though the mistake of the testator cannot affect the property of another, yet devisee shall not take the testator's property unless in the manner intended by the testator. But it is said that the testator here laboured under a mistake, and *non constat* what he would have done had he been aware of the true state of the circumstances. The best answer to such reasoning was given by Lord Alvanley in the case of *Whistler* v. *Webster,*—that no man shall claim a benefit under a will unless he confirms as far as he is able, and gives effect to every thing contained in it, without reference to the consideration whether the testator had any knowledge of the extent of his power or not. Nothing can be more dangerous than to speculate on what he

would have done if he had known one thing or another. It is enough to say that he has manifested the intention that the property over which he professes to exercise a testamentary power, should go in such a manner. Whether he thought he had the right, or, knowing the extent of his authority, intended to exceed it, is immaterial." After reviewing the prior decisions he said:—"It cannot be argued that the rule does not reach an heir at law. Lord Hardwicke would not put the case of an heir at law by way of illustration, if the heir could not under any circumstances be put to election. Mr. Thelluson's heir takes these estates as if his father had not made a will; but my opinion is, that he cannot also take what is given to him by the will. He must therefore *elect*." There was an appeal against this decree, but it was affirmed by the House of Lords.*

Erskine's judgment affirmed by the House of Lords.

With questions of evidence our Chancellor was very familiar, and it was a great comfort to him when they came before him. In a pedigree cause a new trial was applied for on the ground, 1st, That hearsay evidence of a husband as to the legitimacy of his wife had been rejected because he was not her relation by blood; and, 2dly, That a forged register had been produced by the party who had gained the verdict.—*Lord Chancellor.* "First. Consider whether the knowledge of the husband, as to the legitimacy of his wife, is not likely to be more intimate than that of any relation, however near in blood. He has every motive to inquire into the fact, with the means of ascertaining it. If she is entitled to any freehold estate of inheritance, he is tenant by the curtesy. So, as to personal estate, he is entitled to all that comes to her. The honour of the husband and the family are connected with her pedigree, and the subject must often be discussed between them. How much or how little weight the evidence ought to have, will be the subject of consideration for the jury. Here we are to consider, whether it ought to be admitted or not; and upon that point I think there must be a new trial. Secondly. I likewise think, that there ought to have been a

His decision of questions of evidence.

* 1 Dow. 249.

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new trial on the ground of the forged register, although, giving faith to the rest of the evidence of the party who obtained the verdict, his case might be established without it. I do not say that the forgery was necessarily fatal—but sufficient weight was not given to it. Two conflicting decisions have occurred upon this subject in the House of Lords. In the *Douglas cause*, every branch of the written evidence that went to prove the descent of Lady Jane Douglas was known to be manufactured by Sir John Stewart, who, having neglected to secure evidence of birth, had recourse to those 'feigned letters,' as they were called, in support of his son's legitimacy, and that was considered, both by Lord Mansfield and Lord Camden, as not throwing any obstacle in the way. But in the more recent case of *Lord Valentia*, although his father and mother, before and at the time of his birth, had lived together as man and wife, and his father had often declared that he was married to the mother, and that the claimant was the legitimate son of that marriage, a forged certificate of marriage having been given in evidence, Lord Mansfield said, 'Truth does not require the aid of forgery; if the marriage was real, they might have relied upon the evidence belonging to it;' and judgment was given against Lord Valentia.* These two cases stand in opposition to each other. A rule is not to be laid down either way, but every case must depend upon its own circumstances."†

Right of the House of Lords to give the exclusive right of publishing their proceedings.

I will mention only one other decision of Lord Erskine in the Court of Chancery, which he pronounced the day he gave up the Great Seal. The House of Lords, according to many precedents, having made an order, "That the Lord Chancellor should give orders for the printing and publishing the trial of Lord Melville, and the several questions put to the Judges, with their answers thereto, and that no other person should presume to print or publish the same," the Lord Chancellor appointed Mr. Gurney, the famous short-hand writer, who, with his assistants, had taken down the whole in short-hand, and was preparing to publish it — when the defen-

* However, he was held legitimate by the House of Lords in Ireland.

† See Vowles v. Young, 13 Ves. 140—148.

dant advertised another report of the same trial and proceedings: a bill was filed, and a motion made for an injunction.—*Lord Chancellor.* "Notwithstanding the high authority of the House of Lords, the copyright existing by my order under the direction of the House, I should not have been justified in granting the injunction without hearing the defendant, and I feel so forcibly the arguments that have been pressed for him, that if the case of *Bathurst* v. *Kearsley* had not been produced, which cannot be distinguished from this, I should not have been disposed to grant the injunction in the first instance, as it is not sufficient that privileges, however high, have been exercised, unless they have been judicially recognised. I shall therefore follow the example of Lord Eldon in the case of *Bruce* v. *Bruce* upon a dispute between the King's printers in this country and in Scotland, great consideration being necessary to arrive at a right judgment between their contending patents. When I then pressed him with the argument, that injunctions proceeding upon legal rights ought to have their foundation in legal title, receiving consummation by legal judgment, he answered, that the same question had been decided by Sir Joseph Jekyl, and his decree affirmed by the Lord Chancellor, and that the Court granting the injunction till the hearing did not decide ultimately upon the rights of the parties. I feel so much the detriment to the defendant from an injunction upon a publication of this temporary nature, calculated merely for the gratification of present curiosity, that unless I had a strong impression that at the hearing I should continue of the same opinion, and decree a perpetual injunction, I should not grant the injunction now. The facts are all admitted, and the question rests on the mere right of the plaintiff to a monopoly of this subject. This case turns on the authority of the Lords to exercise the privilege of appointing a person with exclusive power to print and publish their proceedings. The privilege has been uniformly asserted by the Lords, and it is confirmed by Lord Hardwicke and Lord Northington. The case of *Bathurst* v. *Kearsley* had a favourable circumstance for the defendant, which the present wants. There, the

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House of Lords had permitted the Duchess of Kingston to employ a person to take notes on her behalf; she delivered the notes to the counsel to be corrected, and afterwards sent them so corrected to the defendant, with directions to publish them for her protection. The present defendant does not claim under Lord Melville, but stands upon the liberty of every individual to publish an account of this trial. The trial of Dr. Sacheverell was published by the same authority which the plaintiff has obtained; and there are many other instances, of which I have selected a few, not only on articles of impeachment by the House of Commons, but also in trials for felony and treason." He then went through Lord Winton's trial, Lord Oxford's, Lord Lovat's, Lord Ferrers's, the Duchess of Kingston's, and Mr. Hastings's. He added, "I do not proceed on any thing like literary property, but upon this only, that the plaintiff is in the same situation as to this particular subject. At the hearing it is possible that a different view may be taken of the case. In *Miller* v. *Taylor* it appeared that the Crown had been in the constant course of granting the right of printing Almanacks; and at last King James II. granted that right to the Stationers' Company and the two Universities; for a century they kept up that monopoly by prosecutions; at length Carnan, an obstinate man, insisted on printing an almanack of his own. An injunction was applied for to the Court of Exchequer, and granted till the hearing: but at the hearing, that Court, sitting in equity, directed the question to be put to the Court of Common Pleas, whether the King had power to grant the exclusive right of printing and publishing Almanacks? After the case had been twice argued, the Court of Common Pleas returned for answer that the grant was void. The injunction was accordingly dissolved, and the House of Commons threw out a bill introduced for the purpose of continuing the monopoly." *

Erskine's great merit when pre-

It is impossible, with any justice, to praise Erskine as a magistrate, while we view him presiding in the Court of

* Gurney v. Longman, 13 Ves. 493—509.

Chancery; but, luckily for his judicial fame,—while he held the Great Seal, the impeachment of Lord Melville, which had been voted in the lifetime of Mr. Pitt, came to be tried before the House of Peers. Mr. Hastings's trial had brought this mode of proceeding against state offenders into much disrepute, and to Erskine belongs the merit of proving that it may still be so conducted as to prove an efficient safeguard of the Constitution. Instead of the House sitting to hear the case a few days in a year, and when sitting being converted from a Court of Justice into a theatre for rhetorical display, he insisted that it should sit, like every other criminal tribunal, *de die in diem*, till the verdict was delivered; and he enforced both upon the managers of the House of Commons, and on the counsel for the defendant, the wholesome rules of procedure established for the detection of crime and the protection of innocence. During the fourteen days the trial lasted, his demeanor on the woolsack excited universal admiration for dignity, for courtesy, for impartiality, for firmness, and for discrimination. His *nisi prius* experience was now of infinite service to him, and he was able in a few minutes satisfactorily to decide questions of evidence which might have consumed whole days in arguments and in references to the Judges, and in processions from Westminster Hall to the Chamber of Parliament, and from the Chamber of Parliament to Westminster Hall. Entire deference was properly shown to his opinion respecting the mode of examining the witnesses and the admissibility of written documents, and without any intrusive interference, not unfrequently by a question which he put, or a suggestion which he offered, he materially assisted both the prosecution and the defence. As the evidence turned very much on matters of account, it is difficult to convey any idea of the points which were ruled; but as a specimen I will mention the decision upon the question, whether the contents of a book kept in an iron chest in the Pay Office could be read against Lord Melville, — Mr. Whitbread, Sir S. Romilly, and Serjeant Best contending for the Commons, that he must be presumed to be cognizant of them, and his counsel, Mr. Plumer and Mr.

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Adams, insisting that, as the book was not kept by him or under his authority, he could not be affected by it.—*Lord Chancellor.* "Unless any noble lord shall think that this matter ought to be further considered in the Chamber of Parliament, I will now state what I think of it. I am of opinion that the entry proposed to be read from this book ought not to be received. I am persuaded that the honourable managers offered it to the Court from a sense of duty and justice; and I am persuaded that every one of your Lordships feels, as I do, the greatest possible respect for their dignity and learning; but it is the office and duty of the House, as a Court of Justice, to pronounce upon the legality of the evidence which is offered to it; and I am anxious, in the few words I mean to deliver, to make it manifest that the House has administered, as it will always administer, consistent justice. The certificate of Mr. Andrew Douglas, as to the receipt of money at the Exchequer, was received yesterday, because he was proved to have acted under a power of attorney from Lord Melville, and that certificate was shown to have been given in the universal and public course by which the receipt of such money was to be manifested. But this is a book which cannot be received on any principle of justice. If it had been an official document to which Lord Melville had access, and which it was his duty to examine, he might have been presumed to be aware of its contents; but no such character has been imputed to it; or if he could have been proved to have referred to it, or to have adopted it, it would have been evidence against his Lordship, whether it be public or private; but the honourable managers did not profess to be possessed of any such proof — saying only that the noble lord had admitted a balance similar to that which the House would have found recorded in the book if it had been received." The House unanimously concurred in this opinion. Without further discussion the book was rejected.

Question on the privilege of a member

When Mr. Tierney, one of the managers for the Commons, was called as a witness, he claimed as a privilege to be examined from his place in the gallery set apart for the Com-

mons' use.—*Lord Chancellor.* "I think there ought to be no distinction between one witness and another, as to the place in which he is to be examined. It is the privilege of the Lords to say where a witness is to be placed upon his examination."—Mr. Tierney, counting, perhaps, on former intimacy and partisanship with the Chancellor, was beginning to remonstrate, when the Chancellor stopped him by saying very gravely, "I apprehend we can hear no further argument on this subject from a member of the House of Commons; and if the gentleman is to be examined, he must stand in the proper place for witnesses."—Mr. Tierney was obliged to descend to the witness-box, and being asked by Mr. Whitbread whether he had been at any time Treasurer of the Navy? thus vented his spleen: "My Lords, before I answer that question, I presume I may be permitted to clear myself from what may otherwise appear to be a want of respect to your Lordships. There was nothing more remote from my intention than to show any thing inconsistent with the most complete deference to the order and proceeding of this Court; neither have I any personal motive for presuming to protest as to the place in which I am examined. I felt that the courtesy of every Court in the kingdom would have allowed me to be examined in any place in which I might be sitting when called as a witness; and being in the gallery, as one of the Commons, not an indifferent spectator, but as member of a committee of the whole House, to make good the charge against Lord Melville, I did feel that I should be wanting in the respect which is due to them, did I not endeavour to maintain my right and privilege, of being examined in my place, in which, as one of the representatives of the people, I attended. Having protested against the place in which I now stand, I will proceed to answer the questions of the honourable manager." *

Of the House of Commons to be examined without coming into the witness-box.

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In strong contrast to the rudeness and unfairness I have witnessed in Judges refusing, at a late hour of the night, the reasonable request of counsel for an adjournment before

* Hatsell's Precedents, iv. 288.

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entering on the defence of their clients, Lord Chancellor Erskine, while the day was not yet far spent, when he saw that Mr. Plumer appeared fatigued from the effort of having spoken some hours for Lord Melville, thus spontaneously addressed the weary advocate: — "If you seek for a resting-place, in a course so complicated and extensive as this, you may freely choose it for yourself. This Court, which ought to be an example to all other Courts, will ever hold in the highest reverence the indulgent character of British justice. I am persuaded, without calling for the formal consent of their Lordships, that if you find it more consistent with the duty which you owe to your client, or more comfortable to yourself, you may rest here, and proceed to-morrow morning in your defence." — The indulgence was gratefully accepted.

On the other hand, the Chancellor husbanded the time of the Court by stopping, with some severity of observation, all frivolous inquiries and discussions. Thus the managers, after showing that a document, which they wished to give in evidence, had been admitted to be genuine by Lord Melville, having tried to give it validity by proving that it had been treated as genuine by the Lords of the Treasury, he exclaimed — "Lord Melville having recognised the document, it is already admissible in evidence; but the opinion of the Lords of the Treasury upon it is of no more consequence than the colour of their clothes." *

Lord Melville acquitted.

When the verdict was to be given, the Chancellor merely said, "My Lords, your Lordships having fully heard and considered the evidence and the arguments in this case, have agreed upon several questions which are severally to be put to your Lordships, and the first question is this: "Is Henry Viscount Melville guilty of the high crimes and misdemeanours charged upon him in the first article of the im-

* The last day Lord Tenterden ever sat in Court (which was on the trial of the magistrates of Bristol),—to rebuke a counsel who was wasting time by irrelevant questions respecting a journey performed by the mayor in a post-chaise and four,—he observed with much solemnity, "Sir, you have forgot to ask him the colour of the jackets of the postilions."—He was taken dangerously ill the same night; and having in his delirium still dreamed of the trial, he expired with these words on his lips: "Gentlemen of the jury, you will now consider of your verdict."

peachment, or not guilty? John Lord Crewe, what says your Lordship on this first article?"—He afterwards put the like question to all the peers present, on each of the ten articles. He himself voted last,—saying, "NOT GUILTY," to the 1st, 4th, 5th, 8th, 9th, and 10th; and "GUILTY," to the 2nd, 3rd, 6th, and 7th articles. But, on summing up the votes, there was a majority in favour of the defendant on all; and the Chancellor thus spoke:—"My Lords, a majority of the Lords have acquitted Henry Viscount Melville of the high crimes and misdemeanors charged upon him by the impeachment of the Commons, and of all things contained therein. Henry Viscount Melville, I am to acquaint your Lordship, that you are acquitted of the articles of impeachment exhibited against you by the Commons for high crimes and misdemeanors, and of all things contained therein."—Lord Melville, in recognition of the fairness of his trial, made a low bow to the Chancellor, and withdrew.*

Hearing of the appeal of Mrs. Fitzherbert v. Seymour.

To finish what I have to say of Lord Erskine as a Judge, I have only to advert to the appeal business in the House of Lords while he presided there. Having the assistance of Lord Eldon and Lord Redesdale, to whom he generally deferred, he disposed of it satisfactorily,—with one exception, which I mention with great pain, because it threw some suspicion upon the impartial administration of justice in the court of last resort. A daughter of Lord Hugh Seymour, being left an orphan by the death of both her parents soon after her birth, remained under the care of Mrs. Fitzherbert till she was between five and six years old, when her family required her to return to them, and filed a bill in the Court of Chancery to have guardians appointed to her. The Master to whom the matter was referred approved of Lord Euston and Lord Henry Seymour as guardians, and from his decision Mrs. Fitzherbert, who was much attached to the child, appealed to Lord Chancellor Eldon, who, after a long hearing and with less than his usual hesitation, confirmed the Master's report. "While the cause was depending, the Prince of Wales, who lived in Mrs. Fitzherbert's house as his own, was

* 29 St. Tr. 549—1482.

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extremely anxious about the event of it. He loved the child with paternal affection, and the idea of having her torn from him seemed to be as painful to him as it was to Mrs. Fitzherbert." An appeal being brought to the House of Lords against Lord Eldon's order, His Royal Highness made his wishes on the subject generally known, and actively canvassed Peers to attend and vote for a reversal. The hearing of the appeal excited more interest than any judicial proceeding in the House since the Douglas cause. All notion of Mrs. Fitzherbert being appointed guardian was abandoned, but the effort was to have the Marquess and Marchioness of Hertford appointed, there being an understanding with them that they would not remove the child from Mrs. Fitzherbert. Lord Eldon having stated the reasons for his decree, to which he adhered, left the House. Lord Chancellor Erskine moved a reversal of the decree, and that the Marquess and Marchioness of Hertford should be appointed guardians, on the ground that the Marquess was nearest in blood to the infant. Sir Samuel Romilly, who was counsel for the appellant, says, "Several Peers voted against this, but there was no division. I counted between eighty and ninety Peers who were present: the Prince, who was as anxious that Mrs. Fitzherbert should continue to have the care of the child as he could have been if the child had been his own, and who knew that Lord and Lady Hertford would not remove her, had earnestly entreated all his friends to attend. I had, on the Prince's account, done every thing that depended on me to prevent this; and which was only to represent to Colonel M'Mahon what I thought of such a proceeding. The question was certainly one which involved no legal consideration whatever, and which every Peer was as competent to decide as a lawyer could be, but yet to canvass votes for a judicial decision, is that which cannot be too strongly reprobated."*

June, 1806.

* Life of Romilly, ii. 146.

CHAPTER CLXXXV.

CONTINUATION OF THE LIFE OF LORD ERSKINE TILL HE RESIGNED THE GREAT SEAL.

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Erskine in the House of Peers.

His egotistic maiden speech there.

We must now regard Erskine in his political capacity while he was a member of the Fox and Grenville Government. He does not seem to have had any great weight either in Parliament or in the Cabinet. He rather shocked the Peers by the egotism of his maiden speech among them, which was upon the bill to indemnify witnesses who were to be examined on the trial of Lord Melville. "I feel it my duty, my Lords," said he, "to communicate my sentiments on a subject of so much consequence to proceedings in Courts of Law. I have been seven and twenty years engaged in the duties of a laborious profession, and while I have been so employed I have had the opportunity of a more extensive experience in the Courts than any other individual of this generation. In the profession there have been and there now are men of much more learning and ability than I pretend to, but it is very singular that in these twenty-seven years I have not for a single day been prevented from attending in the Courts by any indisposition or corporeal infirmity. Within much the greater part of this period I was honoured with a patent of precedency, and have been engaged in every important cause in the Court of King's Bench. Your Lordships would have no concern with the history of my political life were it not connected with the present inquiry; but when I declare that I have never known an objection taken to an interrogatory, 'that the answer might subject the witness to a civil suit,' it is material for your Lordships to know that my experience is not only equal to that of any individual Judge, but of all the Judges collectively. A decision of Lord Kenyon to the contrary has been cited; but the report must be wrong, for I was counsel

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Bill to declare that a witness cannot object to answer questions on the ground that his answers may subject him to a civil suit.

in the cause, and I have no recollection of such a point having been mooted, and the opinion imputed to Lord Kenyon is different from what I have often heard him express. I must, therefore, oppose this bill, and recommend that our legislation on the occasion be confined to an act *declaring* the existing law; and that, I think, will be sufficient to obviate the danger of witnesses refusing to be examined because their answers may affect their civil rights, and if no other Lord more competent will undertake the task, I will myself bring forward a measure which will place the question for ever in repose.'" He accordingly introduced a declaratory act to that effect, which passed both Houses, and received the royal assent.

March 3. 1806. Debate on the appointment of the Chief Justice of the King's Bench to a seat in the Cabinet.

The first hostile discussion which took place in the House of Lords after the formation of the new Government was upon the appointment of Lord Ellenborough, Chief Justice of the King's Bench, to a seat in the Cabinet. Lord Eldon and other Peers having strongly condemned it on the ground that the Cabinet Minister might have, as a Judge, to try the prosecution, for treason or sedition, which he had recommended and on the event of which the stability of the Government might depend, the Chancellor left the Woolsack to plead for it, but was not very successful. After a laboured panegyric upon the learning and talents of Lord Ellenborough, he contended that the King was entitled to the assistance in council of all his subjects, and that no office, civil or military, lay or ecclesiastical, was a disqualification to a subject performing the duties of a Privy Councillor. He denied that the summoning of the Chief Justice of the King's Bench to the Committee of the Privy Council, commonly called the CABINET, was either illegal or unconstitutional. "The *Cabinet*," said he, "is a word never mentioned in any Act of Parliament, or in any parliamentary proceeding, and is wholly unknown to the law and the constitution. The King has his Great Council, consisting of the two Houses of the Legislature, and his Privy Council, consisting of such individuals as he chooses to swear to give him faithful advice on affairs of state. He seldom summons all

Erskine's defence of this measure.

these in a body into his presence, referring particular subjects to particular members of the Privy Council, who are responsible respectively for the advice which they give to him. No one denies that a Judge may properly be sworn of the Privy Council, and since the Revolution the chiefs of the Courts in Westminster Hall have generally had this honour conferred upon them. But it would be an unqualified interference with the King's prerogative to tell him that he shall not ask advice of a Privy Councillor. It has not been usual for the Chief Justice of the King's Bench to be summoned to the Committee of the Privy Council, called the Cabinet; but that venerable magistrate Lord Mansfield was constantly so summoned, during several administrations, without any complaint or suspicion that thereby the law or the constitution had been violated. There have been repeatedly Lords Justices named to exercise the functions of the Executive Government in the absence of the Sovereign, and the Lord Chief Justice of the King's Bench for the time being has generally been one of them, without any suspicion being cast upon his judicial purity. As to prosecutions for treason, Judges, members of the Privy Council, have often attended when persons arrested on charges of treason have been examined, and I believe that prosecutions for libel are left to the Attorney General and the Home Secretary. Notwithstanding the elevated situation which I occupy in this House, by the pleasure of my Sovereign, I will never forget my duty to the people, whose partiality I have so long enjoyed. I will ever bear in mind the active and successful part which I have taken to support TRIAL BY JURY; and if I saw any danger to public liberty in the appointment of Lord Ellenborough to a seat in the Cabinet, I should have been the first to oppose it; but taking a totally different view of the subject, I shall be glad, sitting by the side of my noble and learned friend, to consult, in conjunction with him, for the public welfare."

Condemnation of it.

The resolution of censure was negatived without a division *, but the appointment was condemned by the public voice, and justly brought a great slur upon "ALL THE TALENTS." To urge that the "Cabinet is not known to the law," is a mere

* Parl. Deb. vol. vi. vii.

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quibble.* By our constitution in practice, it is a defined and acknowledged body for carrying on the executive government of the country, and the question cannot be evaded, whether a Judge employed in administering the criminal law may constitutionally belong to it? I without hesitation answer in the negative. The duties of Criminal Judge and Member of the Cabinet are incompatible. I can say from my own experience under Lord Grey's administration, which may now be referred to as matter of history, that the policy of instituting prosecutions both for treason and seditious libels does and must come under the consideration of the Cabinet. Suppose that the Chief Justice of the King's Bench being a Member of the Cabinet, absents himself from such discussions, how are the public to know that he was absent when he comes to preside at the trials ordered by his colleagues?—and if he were to proclaim the fact, how can he, without suspicion, give an opinion upon the seditious tendency of a publication which contains much abuse of the public measures to which he is a party? The evil does not cease with the Government to which he belonged, for when that is dissolved and his political rivals are in power,—being stamped with the character of a partizan, he is in danger of being suspected of a wish to thwart their prosecutions, and thereby to hasten their fall.†—I do not think there is now much danger of the precedent being followed.

* It might be very convenient for a Prime Minister, upon a requisition by some aspiring subordinate to be introduced into the Cabinet, to be able to say to him,—"My dear friend, the Constitution knows nothing of the CABINET: you are already a 'Privy Councillor,' and before the law all Privy Councillors are equal. I am glad that I have not to refuse a request of yours: do not let me hear another word about the Cabinet; you and I have an equal right to be consulted by the Sovereign when the advice of either of us is wanted."

† When Mr. Perry, the proprietor of the "Morning Chronicle," was tried in the year 1810, for a libel on George III., and was acquitted under the direction of Lord Ellenborough, I happened to be sitting, along with several other juniors, immediately behind Sir Vicary Gibbs, the Attorney General, who turned round to us and said in a loud whisper, "We shall never again get a verdict for the Crown while the Chief Justice is in opposition." Yet the acquittal was allowed by all impartial persons to be highly proper,—the alleged libel merely alluding, not disrespectfully, to the prejudices of the reigning Sovereign against his Roman Catholic subjects. Gibbs had a spite against Ellenborough, who said of him that "his nose would take ink stains out of linen."—*Sir Vicary* went generally by the soubriquet of SIR VINEGAR; and one fine summer's day, looking more than usually *acetous*, the phenomenon was thus accounted for:

"The Sun's bless'd beam turns VINEGAR more sour."

On the next question which arose in the House of Lords I must likewise use the freedom of dissenting from Lord Chancellor Erskine. He moved a resolution that, pending Lord Melville's trial on the impeachment by the Commons, no part of the proceedings should be published,—and even after the hearing of the case was over, he supported a further resolution, that the prohibition should be continued "until after the House shall have delivered its final judgment upon the said impeachment,"—with much *palaver* about the dignity of the House and the danger to the administration of justice from partial reports.* But the House of Lords during an impeachment is a court of justice sitting *foribus apertis,*—that is, the public being admitted as far as there is accommodation for them, — and an accurate report of the proceedings is merely an enlargement of the Court, admitting all to be virtually present who choose to read a newspaper. Where there is a trial lasting many days, it is utterly impossible that by any other means than a daily publication, the bulk of the community can ever be made acquainted with the merits of the case. It is absurd to suppose that judges or jurymen can be biassed by an accurate report of what they have heard, and improper comments upon the merits are likely to be more mischievous if not corrected by a full statement of what has actually passed. The House was obeyed in this instance, but such an injunction was not issued on the trial of Queen Caroline, and would not now be endured.

Prohibition by House of Lords to publish any of the proceedings on Lord Melville's trial till the trial was over.

On the motion for the removal, by an address to the throne, of the Irish Judge Fox, accused of misconduct in his office, the Chancellor made a very characteristic speech: "My noble and learned friend who spoke last, alluded to the motto which I have selected, which ornaments the panel of the carriage at your Lordship's door, and which is to be borne, with the insignia of the Erskine family, through all future generations. For "TRIAL BY JURY," I have fought in the hottest times and shall ever fight; but I do not imply anything in favour of the Jury separate from the Judge who presides at the trial; it is the trial of Judge and Jury which attracts my respect and admiration, and I do not stand up

Prosecution of Judge Fox.

* 6 Parl. Deb. 928.; vii. 250.

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for the Jury more than for the Judge. Let us proceed against Mr. Justice Fox constitutionally. I have been no flatterer of Judges. Did ever any man go further to remind Judges of their duties to the country? For my boldness I have received public rebukes, which I have returned I trust with honest indignation. It is my pride that I was honoured with a gown of precedence, which permitted me to be counsel against the Crown, and the recollection of what I did on these occasions for my country constitutes no inconsiderable portion of the happiness of my life. Feeling as I do, I join with peculiar fervour in the wish of my noble and learned friend, that Judges may not be placed above the law, and permitted to trample on the rights of the subject. The true question is, what is the proper mode of investigation to be adopted in this case? Witnesses have been examined at your bar, but in the absence of the accused; and though your Lordships are exalted, enlightened, and learned, you are still men, and subject to all the infirmities of human nature. The witnesses have said, that this learned Judge condescended to bully the jury — but what a spectacle has this House exhibited? While we are arraigning the Judge, what are we doing ourselves? Have you not, behind his back, been haranguing one another? — inflaming one another? Must not all justice perish if such proceedings are sanctioned? Suppose when you ask the Commons to concur in your address they were to say, 'we choose to proceed by impeachment,' in what a situation would you be, having already prejudged the man whom you would be called upon to try? Your Lordships would do better by referring the case to the ordinary tribunals, and letting the guilt or innocence of the learned Judge be decided by a jury upon a *scire facias* to repeal the patent by which he holds his office. At all events, let not your Lordships prejudge a cause which you may probably be called upon judicially to determine."*

Bill for the abolition of the Slave Trade.

The bill for the immediate abolition of the Slave Trade — the great glory of the Fox and Grenville administration, was supported by their Chancellor, who took occasion to announce

* 7 Parl. Deb. 767.

supported by Erskine.

his change of opinion upon this subject. "I was in the West Indies," said he, "some years ago in the service of my country, and the condition of the slaves there seemed to me to be comfortable; they were generally treated in the kind manner used by great families in England to their ancient domestics. Believing them to be happy and contented I could not be hostile to a system which produced such results. I have since had reason to think that I was deceived by outward appearances, and that, without evil, man can never be the property of man. The horrors of a Guinea ship have been lately disclosed to me in the course of my profession. During the trial of a policy of insurance on a cargo of slaves it appeared, that having risen on the crew in hopes of liberty, and being fired upon, — some of them were mortally wounded, some voluntarily jumped overboard a prey to the sharks, — while others, who remained on board, died, from refusing to take food, — and a British jury was called upon to say, for which of these classes the underwriters were to make compensation to the slave dealers? This country is the morning star which has enlightened Europe, and let us now set an example of humanity and justice which may be followed by all the nations of the earth." * He had the satisfaction, as first Lord Commissioner, to announce the royal assent to this bill.

July 23. 1806. King's speech at the end of the Session.

When the session closed he delivered the royal speech, and was observed, in accordance with the opinions he had so often expressed since the commencement of the war, to read with peculiar emphasis the sentence announcing that "His Majesty being always anxious for the restoration of peace on just and honourable terms, was engaged in discussions with a view to the accomplishment of this most desirable end." † But these hopes proved delusive; through the ambition and obstinacy of Napoleon, hostilities continued to rage in Europe for many years, — till the hour appointed for his overthrow at last arrived.

During the recess, all the friends of civil and religious liberty were deeply afflicted by the death of Mr. Fox, at a

* 7 Parl. Deb. 807. † Ib. 1262.

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time when his countrymen having renounced the prejudices they had long fostered against him, were eager to avail themselves of his services in negotiating a peace, or in conducting the war, — which all agreed had been hitherto sadly mismanaged. Erskine felt the blow with peculiar severity, for he had not only since his first entrance into public life looked up to this great patriot and most amiable man as his political chief, but he had cherished for him an uninterrupted and ardent private friendship. On the melancholy day when the mortal remains of Charles James Fox were deposited in Westminster Abbey, near those of his illustrious rival William Pitt, their deaths being divided only by a few short months, — Erskine was one of the pall-bearers, and could ill conceal his agitation as the coffin was lowered into the grave, and the awful words were pronounced, "Earth to earth — ashes to ashes — dust to dust." *

Sept. 13. 1806. Death of Mr. Fox.

Oct. 10. 1806. His funeral.

He continued to hold the Great Seal, but was not much consulted or considered in the measures of the Government. From the meeting of the new Parliament in December till the Ministerial crisis in March following, he did not speak in the House of Lords, except on occasions of form and ceremony. Lord Grenville himself proposed and carried through the bill for introducing into Scotland jury trial in civil cases, and bills brought up from the other House by Romilly to subject real estates to simple contract debts, and for other law reforms, remained unnoticed.

Dec. 15. 1806. Lord Grenville Minister.

From the beginning of March nothing was talked of or thought of but the bill moved by Lord Howick, now the leader of the House of Commons, for allowing Roman Catholic offi-

Bill for allowing Roman Catholics to hold commissions in the army.

* "Most of the persons present seemed as if they had lost a most intimate and a most affectionate friend." — *Romilly's Diary.* Even a bitter political opponent soon after sang —

"For talents mourn untimely lost,
When best employ'd and wanted most;
Mourn genius high and lore profound,
And wit that lov'd to play, not wound;
And all the reasoning powers divine
To penetrate, resolve, combine;
And feelings keen, and fancy's glow, —
They sleep with him who sleeps below."

Introduction to the First Canto of "Marmion."

Ministerial crisis.

cers in England to hold commissions in the army in the same manner as since the year 1793 they had been permitted to do in Ireland. This bill was not mentioned to Lord Erskine till it was about to be brought in; and then, strange to say! he disapproved of it, although he did not think it of sufficient consequence to require his resignation. He concurred in the propriety of withdrawing it when it was found so obnoxious to the King; but he strenuously supported Lords Grenville and Howick in their resisting the unconstitutional requisition by the King, that they should give him a written promise, signed with their names, never again to propose any measure for farther relaxing the penal laws against the Roman Catholics.

Erskine's advice to the King.

His Majesty not yielding to the representations made to him on the impropriety of his demand, Lord Erskine, as the Keeper of his Conscience,—in a long interview with him,—attempted to bring him to reason. Of this we have the following amusing narrative in the Diary of Sir Samuel Romilly. "*March* 19th.—The Chancellor gave Pigott and me a long account of a very serious conversation he had yesterday with the King; I should rather say, of a long speech he made to the King. When he went in to his Majesty, and had told him that the Recorder's report was to be made, he says that, though it is contrary to all court *etiquette* to speak on any subject which the King has not first mentioned, he proceeded somewhat to this effect. He said he was about to do what he believed was very much out of order; but he hoped that his Majesty would excuse it in consideration of the very extraordinary conjuncture in which the country was placed; that he was sensible, when he first entered into his Majesty's service, his Majesty had entertained a prejudice against him; that he was quite satisfied that this prejudice was now entirely removed; and that his Majesty did him the justice to believe that he had served him faithfully; that upon the measure which had been the original occasion of the present state of things (meaning the Catholic Bill, as it has been not very properly called) he thought, both religiously and morally, exactly as his Majesty himself did; that, however, after what had passed, it appeared to him that the

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Ministers who had signed the minute of council could not possibly, with any consistency of character, retract it; and that to give a pledge not to offer advice to his Majesty on measures which the state of public affairs might render necessary would be, if not an impeachable offence, yet, at least, that which, constitutionally, could not be justified. He then said that he thought it his indispensable duty to represent to the King the situation in which he stood; that he was on the brink of a precipice; that nothing could be more fatal than to persevere in the resolution which his Majesty had formed of dismissing his Ministers; that the day on which that resolution was announced in Ireland would be a day of jubilee to the Catholics; that they would desire nothing more than to have a ministry who were supported by *all the talents* and weight of property in the country go out upon such a measure; that he ventured to tell his Majesty that, if he proceeded with his resolution, he would never know another hour of comfort or tranquillity. The King, he says, listened to all this without once interrupting him; that he could observe, however, by his countenance, that he was greatly agitated; and when the Chancellor had concluded, the King said to him, 'You are a very honest man, my Lord, and I am very much obliged to you:'—and this was all. The Chancellor thinks that he has made a great impression, and half flatters himself that the King will retract his resolution."*

He is ordered to surrender the Great Seal.

Several days elapsed quietly, and Erskine, ignorant of the intrigues of Lord Eldon and the Duke of Cumberland, who were then negotiating for the formation of a new Government, really believed that the danger had passed by, and that he might remain in office, under George III., till his patron and friend, the Heir Apparent, should mount the throne,— when he expected that the chief power would be vested in his own hands. He was in this frame of mind when, late at night on the 24th of March, he received a summons to attend the King next day, before twelve o'clock, to deliver up the Great Seal.

Notice had been put up in Lincoln's Inn Hall that judg-

* Life of Romilly, ii. 187.

ment would be pronounced the next day in another branch of the cause of *Purcell* v. *M'Namara*, which had been argued before him, assisted by the Master of the Rolls. Soon after ten he entered the Court, which was densely crowded,—his Honour following him,—and when they were seated, he addressed the Bar in these words: "I had fixed this morning as the earliest and most convenient time for finishing, with the assistance of his Honour the Master of the Rolls, at least the judicial part of this long and important case; but late last night, — much too late to make it possible for me to apprise you of it, — I had notice to attend his Majesty, with his other Ministers, before twelve o'clock this day. I shall, therefore, ask his Honour to deliver his opinion, in which I heartily concur, — his Honour and myself having had long deliberations upon the subject. With regard to the other matters which stand for my own judgment, I shall not have time to deliver them in open Court. Adopting the same course as my Lord Eldon when he retired from the office of Lord Chancellor, I shall send them to the register.

His farewell address to the Chancery Bar.

"If I should be called out of this world as suddenly as I have been out of this place, it will be a happy thing for me if I can render as clear an account of my conduct through life as of my administration of justice during the period I have presided here. I believe it would not have taken an hour by the clock to have delivered all the judgments that remain for me to pronounce. — I have altered nothing here. — I have removed no man. — But I cannot with justice to myself, or with propriety as it regards you, retire from this Court without returning you my most sincere thanks for the kind, honourable, and liberal manner in which you have uniformly conducted yourselves towards me. — I approach the threshold of my high office with conscious pride and satisfaction, — particularly when I consider the complicated nature of the duties I have had to fulfil, and their newness to me. I am happy to acknowledge that it is to the learning of the Bar, and the assistance I have derived from you, that I am indebted for having been enabled to administer these duties with justice and equity. — In retiring

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to private life, it will be my delight to cultivate that acquaintance which I have had with you in my public station."

Answer by the Attorney General.

Mr. Attorney General (Sir A. Piggot): — "I am sure, my Lord, I should not do justice to the sentiments of the Bar, if I were to suffer your Lordship to leave this Court without expressing their grateful sense of the kindness shown to them while your Lordship has presided here."

The whole Bar rose and bowed to his Lordship, who instantly after retired. *

Resignation of Ministers. Erskine retains the Great Seal for a week to give judgments.

He then proceeded to the Palace. There he found all his colleagues assembled, and they were introduced one by one into the Royal closet, for the purpose of resigning their wands, seals, keys, and other insignia of office. To the general surprise, Erskine returned still bearing in his hand the purse containing the Great Seal; and some supposed that, by reason of his concurrence of sentiment with his Majesty as to the propriety of refusing any farther concession to the Catholics, he had been invited, and had consented, to serve under the "No Popery Ministry." But the explanation of this phenomenon was, that "the King, understanding that there were some causes which had been argued, but in which the Chancellor had not yet pronounced his decrees, desired him to remain a week longer in office, that he might finish the business in his Court." †

March 26. Ministerial explanations. Erskine's statement.

The next day came the Ministerial explanations in the House of Lords, and Lord Erskine said, "he considered the subject of the Catholic question as completely irrelevant as any other whatever to the change in his Majesty's councils, although it happened to be the subject which led to such a conjuncture. Although a member of the late Government, he was decidedly adverse to the measure, and should not have advised it, because he did not see the political necessity for it, which had induced the great majority of his colleagues to recommend it to his Majesty. Yet he thought they were highly commendable in giving his Majesty such advice as they in their conscience thought just, — as well as in declining to

* Annual Register, 1807, p. 415.
† Life of Romilly, ii. 189.

be bound by any pledge to refrain from giving to their Sovereign upon this or any subject such advice as they conceived was for the public good. The firmness with which his Majesty had maintained his own conscientious opinions, by resisting the bill in the extent to which it went, had also his respectful approbation; but he must say his colleagues did right in declining to be bound never again to advise the measure under any possible pressure of circumstances. At the moment when his Majesty's late Ministers relinquished the bill in concession to his Majesty's scruples, they stood in the same situation as on their first accession to office. The right of his Majesty to change his Ministers no man would deny, but for them to have remained in power upon any such condition as the pledge alluded to, would have been, in his opinion, contrary to every principle of Ministerial duty, and directly in violation of the Constitution. Their dismissal for no other reason than their declining the pledge, he was afraid was a declaration to the Catholics that the penalties and disabilities under which they laboured were to be considered an essential part of our system of rule; what the result might be of such a conviction taking possession of their minds, he was afraid even to conjecture."

Erskine appoints his son-in-law a Master in Chancery.

Impartiality requires me to mention a circumstance, which, I recollect, was generally censured at the time,—that although Lord Erskine had been allowed to retain the Great Seal for a week, only to give judgment in causes which had been argued before him, he employed the interval to concoct a job for the benefit of a member of his family. It is thus related by Romilly: —" Two days before Lord Erskine parted with the Seal, he appointed his son-in-law, Edward Morris, a Master in Chancery. Sir William Pepys was prevailed upon to make a vacancy by resigning. This is surely a most improper act of Lord Erskine's. He ought to have considered himself as out of office last Wednesday. Morris, though a very clever and very deserving man, has no knowledge in his profession of that particular kind which is necessary to qualify a man to discharge the duties of a Master. This is a matter which will draw reproach on the whole Administration,

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though in every other department they have most scrupulously, as I understand, abstained from making any promotions." * He had no doubt supposed in his own mind, that while he held the Great Seal, all its powers, privileges, and patronage belonged to him; and I believe that, if the vacancy had occurred in this interval by death, he would have been justified, according to established usage, in filling it up.

He finally parts with the Great Seal.

Having cleared off his arrear of judgments, and on the 1st of April granted the injunction which I have mentioned in the case of *Gurney* v. *Longman* †, — without any fresh leave-taking, he made his bow to the Bar, and proceeded to the Queen's Palace. There he finally parted with the Great Seal, and it was delivered to Lord Eldon, who kept it in his firm grasp for a continuous period of above twenty years.

His own contentment with the manner in which he discharged his official duties.

From Lord Erskine's farewell address to the Bar, it appears that he was himself well satisfied with the manner in which he had performed the duties of Chancellor; and though he did little to advance the science of equity, the suitors who came before him seem to have had little cause to complain of his decisions; but I am afraid that Romilly, ruminating upon the probable disposal of the Great Seal upon a contemplated change of Ministry a few months after, expresses the general opinion of his own profession and of the public:

Romilly's estimate of this.

"The present Ministry can hardly, considering what the crisis is to which public affairs are hasting, be very long in power; and if those whom they have supplanted should recover their authority, the Great Seal can scarcely be again intrusted to the hands of Lord Erskine: with all his talents (and very great they undoubtedly are), his incapacity for the office was too forcibly and too generally felt for him to be again placed in it." ‡

Bet between two Americans respecting the reversal of his decrees.

His faults as a judge were afterwards greatly exaggerated, and a report was spread abroad that most of his decrees were reversed. This having reached the United States of America, gave rise to a wager, which the parties, with Transatlantic coolness, referred to himself for decision. His reply to the

* Life of Romilly, ii. 192. † *Antè*, p. 574.
‡ Life of Romilly, iii. 394.

American Senator who had taken the *reversal* side of the question is extant, and is a striking instance of his buoyancy of spirit and frank good opinion of himself.

"Upper Berkeley Street, Nov. 13. 1819.

"SIR,

His letter to decide the bet.

"I certainly was appointed Chancellor under the Administration in which Mr. Fox was Secretary of State, in 1806, and could have been Chancellor under no Administration in which he had not had a part; nor would have accepted, without him, any office whatsoever. I believe the Administration was said, by all the *Blockheads* to be made up of all the *Talents* in the country.

"But you have certainly lost your bet on the subject of my decrees. None of them were appealed against, except one, upon a branch of Mr. Thelluson's will — but *it was affirmed* without a dissentient voice, on the motion of Lord Eldon, then and now Lord Chancellor. If you think I was no lawyer, you may continue to think so. It is plain you are no lawyer yourself; but I wish every man to retain his opinions, though at the cost of three dozen of port.

"Your humble servant,

"ERSKINE.

"To save you from spending your money upon bets you are sure to lose, remember, that no man can be a great advocate who is no lawyer. The thing is impossible."

CHAPTER CLXXXVI.

CONTINUATION OF THE LIFE OF LORD ERSKINE TILL THE PRINCE OF WALES, HAVING BECOME REGENT, RENOUNCED THE WHIGS.

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Erskine's general conduct as Ex-Chancellor.

SOME have regretted that Erskine did not close his mortal career on the day when he resigned his office; but, although he cannot, by any means, be held up as a model for Ex-Chancellors, he continued for a good many years, occasionally, to render important services to the public. He began with good resolutions — thus writing to a friend: "I am now retired — most probably for life — and am living, what for me may be considered an idle, but I hope not a useless life — as I keep up my reading, in case the chances of this changeable world should give me the opportunity of turning it to public account. Should I, however, remain long out of a public station, I shall find healthful and interesting occupation in the cultivation of the grateful Earth, who, if well cultivated, is less capricious in the distribution of her favours than Courts or Princes."

Sanguine hopes of the "Talents" that they would speedily be restored to power.

The late change of Government had been so highly unconstitutional, that "all the Talents" for some time thought they must speedily be restored to power. They had a decided majority in a House of Commons returned after an appeal by them to the people, and all the measures which they proposed had passed the other House of Parliament. The bill on which they had differed with the King was allowed by unprejudiced men to be salutary, and no one had ventured to say a word in defence of the pledge he had demanded from them. Accordingly the Marquess of Stafford moved a resolution, "That it is the first duty of the responsible Ministers of the Crown not to restrain themselves by any pledge from giving any advice to his Majesty which, to the best of their judgment, the course of circumstances may render necessary for the honour of his Majesty's crown and the security of his dominions." On this occasion Erskine spoke

April 13. 1807. Motion of the Marquess of Stafford.

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Erskine's speech in support of it.

early in the debate, and thus began: "The particular situation in which I was placed in his Majesty's late councils, as it regards the subject now under consideration, and the many public references which have been made in various places to my office and to my opinions respecting it, make it not unfit, I hope, that I should seek the earliest opportunity, consistently with the forms of the House, of explaining to your Lordships why I think the resolution deserves your support. My Lords, it has been the fashion to represent the introduction of the bill which led to the dissolution of the late Administration, as an extravagant act of political suicide — as a rash, useless, and wanton proposition, dictated by no expediency, and opposed by insurmountable obstacles, within the knowledge of those who introduced it. Nay, my Lords, charges much more serious have been made. It has been more than insinuated that to overcome these obstacles recourse was had to the most unworthy arts of deception. Nothing is more easy, my Lords, for those who have an interest in such misrepresentations to invent and propagate them; but it is not so easy to obtain belief (except in the surprise of the moment) that persons of acknowledged skill and ability as statesmen, should suddenly conduct themselves so absurdly, or that distinguished and characteristic integrity should suddenly give place to dishonour and falsehood." Having at great length explained the existing state of the law with respect to Roman Catholics bearing military commissions in Ireland and in England, — with the proposed alteration of it, and the course which the affair had taken between the King and his Ministers, he thus proceeds: "I never, therefore, at the time the Ministry was on the eve of dissolving, could discover any just or rational ground for its dissolution; and I could never, therefore, persuade myself that their removal was the spontaneous act of the King, because, having the highest opinion of his Majesty's honour and fairness, I could not reconcile their removal with either. A pledge was tendered, which is not only not argued to be legal, but the illegality of which is considered as a childish truism, utterly unfit for debate in Parliament: and yet this refusal, without far-

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ther parley or explanation, and in the midst of the most respectful and affectionate submission, was made the only ground of a total indiscriminate dismission. I believe that, independently of the avowed cause, the fate of the late Ministry had been settled by some secret advisers. We all know, my Lords, that in political life there are wheels within wheels, as many almost as in a silk-mill,—that the smallest, and apparently the most insignificant, are sometimes, from their situations, the most operative, and that some of them, besides, are sunk so deep in the dirt that it is very difficult to find their places, though one can very easily find their tracks and their effects. It is admitted that, consistent with the coronation oath, Roman Catholics may be ensigns, lieutenants, captains, majors, and lieutenant-colonels in the army; but it is argued that they cannot rise to the rank of general officers without a violation of the King's solemn obligation to support the Protestant establishment of the Church of England. What in the name of wonder can the Church have to do with this distinction? Whether it was expedient, as a question of state, to open the army to Catholics at all, the thing is done. We are therefore confined only to the mysterious enigma of the *perjury* in carrying on their promotion to be officers on the staff. My Lords, as I was no party at all to the bill, I cannot but feel a most natural anxiety to deliver myself from the possible imputation of such gross stupidity and folly as to have ever objected to it on that principle. It should be remembered, my Lords, that by the coronation oath his Majesty swore to govern his people according to the laws and customs of this realm; and that to require a pledge of his Ministers not to give him counsel on any subject, was manifestly contrary to the constitution and the laws and customs of the realm. To say, therefore, that the King, without an adviser, was the author of this, was to say that he had undoubtedly broken his coronation oath."* He concluded with the following characteristic disclaimer of being at all tainted by any leaning to Popery:—"My Lords, I have now only

Charge against the King, of violating his coronation oath.

* Romilly says, with astonishment, "No notice was taken of this by any of the Peers who spoke after."—*Life*, ii, 197.

Erskine's confession of faith.

to assure you that no man can be more deeply impressed than I am with reverence to God and religion, and for all the ministers and professors of the Christian faith: I am sure that I need not except even the right reverend prelates in whose presence I make this solemn declaration. My Lords, I glory in the opportunity of making it. Would to God that my life could be as pure as my faith. I consider the Reformation and its irresistible progress in the age which has succeeded it, as the grand æra in which the Divine Providence began most visibly to fulfil the sacred and encouraging promises of the Gospel. I look forward, my Lords, with an anxiety which I cannot express, but with a hope which is inextinguishable, to the time when all the nations of the earth shall be collected under its shadow, and united in the enjoyment of its blessings. It is by that feeling, my Lords, mixed perhaps with what may be considered as the prejudices of education, but which I cannot myself consider to be prejudices, that I have been kept back from going the full length of Catholic expectation. I consider the Roman Catholic faith as a gross superstition — not chargeable upon the present generation, which contains thousands and tens of thousands of sincere and enlightened persons — but the result of the darkness of former ages, and which is fast giving way under the hourly increasing lights of religious and philosophical truth — not that vain and contemptible jargon which has usurped the name of philosophy — but the philosophy of nature, which lifts up the mind to the contemplation of the Almighty, by approaching to him nearer, and discovering his attributes in the majesty and harmony of his works."* The motion was negatived by 171 to 81, and all hope of disturbing the new Government was cut off by a more mortifying defeat in the Lower House, where a similar motion was made by Mr. Brand, and where the Whigs had calculated on a large majority.†

* 9 Parl. Deb. 353.

† "7th April. I dined at Lord Howick's, with a large party of the late ministers and their friends. They are very sanguine as to carrying, by a considerable majority, Mr. Brand's motion.

"8th. The debate was a very extraordinary one. Perceval declared that the

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His complaint against his party.

Erskine was, for a time, a good deal dejected and disturbed by the prostrate condition of his party, — which, in private, he imputed to their own imprudence. The author of the "Rejected Addresses," alluding to his demeanor about this time, says, "I never saw him apparently vexed, except at a *fête champêtre* given by Richard Wilson, at Fulham. I there walked with him round the grounds, when he spoke very peevishly about Lord Grenville and the recently shattered Whig Administration, exclaiming, several times — 'A rope of sand!'"

He exposes himself in the House of Lords about "Trial by Jury."

The only other occasion on which he addressed the House of Lords, before the end of the session, was in support of the "Scotch Judicature Bill," when he rendered himself ridiculous by one of those displays of egotism and vanity which so much detracted from his dignity and usefulness, and made hearers believe it to be impossible that he should be the same man who had so nobly and successfully defended public liberty. Trial by jury being to be introduced into Scotland, he took occasion to remind the House of his devoted attachment to this institution. The Duke of Cumberland, now King of Hanover, excusably joined in a titter occasioned by the repetition of what their Lordships had so often heard — when the indignant orator thus burst forth: "I observe an illustrious personage on the benches opposite smile, and I must be bold to tell him that such a smile is inconsistent with the decorum with which this House is in the habit of hearing every noble Lord express his sentiments. But it is particularly indecorous and indecent in that illustrious personage, to smile at a panegyric upon the 'trial by jury.' 'Trial by jury' placed the present royal family on the throne of England, and 'trial by jury' has preserved our most gracious Sovereign, that illustrious person's father, throughout a long and glorious reign. 'Trial by jury' is the best security for the rights of your Lordships, and of every order in the state, and I can never cease to feel that 'trial

King had no advisers in the measure. While we were locked up in the lobby, we supposed ourselves the majority by about 20, but there was a majority of 32 against us." — *Life of Romilly*, ii. 195.

by jury' has enabled me to address your Lordships upon equal terms with the highest man among you."*

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Dissolution of Parliament. Discomfiture of the Whigs.

Soon after, the Parliament elected under Whig rule was dissolved, although the House of Commons had come to no resolution hostile to the present Government, except against the grant to Mr. Percival of the Duchy of Lancaster for life; but it was thought right to take full advantage of the "No Popery" cry, which now resounded through the length and breadth of the land. In vain did the Whig candidates boast of the good measures of the late Ministry, and complain of the unconstitutional manner in which it had been dismissed. The maxim that "the King can do no wrong," framed to establish the responsibility of his advisers, the nation translated into a declaration "that the King is infallible, and his will is not to be questioned." Accordingly, a Parliament was chosen in which the Whigs were not much more numerous than when they were vainly struggling against the ascendancy of Pitt.

June 26. 1807. Victory of the "No Popery Ministry.'

On the first day of the session, however, an amendment to the Address was moved in both Houses, — when Erskine made a last effort to persuade the Peers that the personal inclinations of the Sovereign ought not to be regarded as law under a Constitutional Monarchy, and strongly inveighed against the late dissolution, saying, that "Ministers should yield to Parliaments, and not Parliaments to Ministers." — But he found himself in a minority of 67 to 160 †, and there being a majority of near 200 ‡ in favour of Ministers in the House of Commons, he abandoned systematic opposition in despair.

For many years he only came forward on rare occasions, to record his dissent to measures which he considered particularly objectionable. He violently condemned the expedition to Copenhagen §, and supported a motion for restoring the Danish fleet. ‖ He took an active part in censuring the famous "Orders in Council," respecting neutral navigation, — truly foretelling, that they would lead to a war with

* 9 Parl. Deb. 487.
† Ib. 591.
‡ Ib. 658.
§ 10 Parl. Deb. 354.
‖ Ib. 653.

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America, and that being found injurious to our own commerce, they must be abandoned. *

Feb. 1808. Jesuits' Bark Bill.

In opposing the infamous and ludicrous attempt to conquer France by prohibiting the exportation of Jesuits' bark to the continent of Europe, he for a time revived his ancient fame. I can speak with confidence of the great talent as well as zeal he displayed on this occasion, for I then appeared for the first time at the bar of the House of Lords, soon after the commencement of my professional career. — Firmin de Tastet, a great Spanish merchant, had imported several large cargoes of Jesuits' bark from South America into England, with the view of forwarding them to different continental ports in the usual course of his trade, and he petitioned against the Bill, on the ground of the heavy loss it would inflict upon him. — I was his counsel, and I well recollect my consternation when the great doors of the House were suddenly thrown open, and I was marched up to the bar by the Black Rod, who thrice stopped me to make my *congées*. The House was very crowded, and in a state of great excitement. — Erskine, seeing my trepidation, most kindly came to the bar, shook hands with me, and did every thing in his power to encourage me. I stated my case with some boldness, and got through pretty well with the examination of my witnesses, — he putting questions to them to bring out the facts more prominently than I could do from my inexperience. I then moved, that on account of the complication of the evidence, and the numerous arithmetical calculations into which the witnesses had entered, I should be allowed till the following day to sum up; and he warmly supported my application — pointing out from his own practice the difficulty of counsel doing justice without preparation in such a case, and urging that the fate of one of the first merchants in the world might depend upon their Lordships understanding it. The Government resisting the application, he divided the House; but there was a considerable majority against us. — I replied with some energy; and, throwing figures and calculations overboard, I not only dwelt upon the grievous private injury which the Bill would inflict on my

April 7. 1808. Opposed by Erskine.

* 10 Parl. Deb. 929. 975. 1149. 1245. 1321.

client; but — contrary to the caution I had received from the Lord Chancellor — I ventured to glance at its general inexpediency, and the discredit which it would bring upon the British name. — A very animated debate then took place on the question, whether the Bill should be read a third time? No notion can be formed of Erskine's admirable speech, from the miserable report of it to be found in print. Even now I have a lively recollection of his impassioned tones, of his piercing eye, of his noble action, as witnessed on this occasion; but I cannot attempt to follow the course of his reasoning, or to describe the manner in which he conjured the right reverend prelates, as ministers of Him who went about healing the sick, to save us from the curse that must follow such unchristian conduct. The Bill being carried by a majority of 110 to 44, he embodied his objections to it in the following protest: —

"1. Because the Jesuits' bark, the exportation of which is prohibited by this bill, has been found by long experience to be a specific for many dangerous diseases which war has a tendency to spread and exasperate; and because to employ, as an engine of war, privation of the only remedy for some of the greatest sufferings which war is capable of inflicting, is manifestly repugnant to the principles of the Christian religion, contrary to humanity, and not justified by the usage cf civilised nations. 2. Because the means to which recourse has been hitherto had in war, have no analogy to the barbarous enactment of this bill — inasmuch as it is not even contended, that the privation to be created by it has any tendency whatever to self-defence, or to compel the enemy to the restoration of peace — the only legitimate objects by which the infliction of the calamities of war can in any case be justified. 3. Because the only possible answer to these objections is, that the bill will not produce the privation which is held forth as its ostensible object, inasmuch as the Jesuits' bark may be exported under licences from the Crown: but such an answer would only prove the bill to be wholly useless to its purposes, whilst it would still leave in full operation the odious precedent of having resorted in cold blood, for the mere speculative sale of our manufactures, even to the possible infliction of miseries not to be vindicated but by the view of self-preservation, or in the extremities of war, directed to that justifiable object. 4. Because, as no

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His protest against it.

scarcity of the Jesuits' bark appears to exist in France, and as, in the contrary case, no possible exertion on the part of this country could effectually prevent its importation into the numerous ports under the dominion and control of the French government, the bill is grossly vicious in principle, whilst it is absolutely nugatory in practice, and is therefore, in every point of view, disgraceful and absurd. 5. Because, if it were even just, expedient, or practicable to force the importation of our manufactures upon our enemies by withholding the Jesuits' bark, but upon condition of their permitting such importation, that principle should have been distinctly expressed in the bill, and the conditions specifically declared in it, instead of vesting in the Crown an arbitrary discretion to dispense with the prohibition by licences — a power destructive of the equality of British commerce, and dangerous to the freedom of the British Constitution.

"ERSKINE."*

His opposition to Bill to allow arrest for libel by the Attorney General.

He next opposed unsuccessfully a bill, very wantonly and offensively brought forward by Sir Vicary Gibbs, to enable the Attorney General to arrest and hold to bail any persons against whom he has filed an *ex officio* information for a libel. It was aimed against proprietors and printers of newspapers who attacked the Government; but there never had been an instance of defendants so prosecuted not duly pleading and taking their trial; and if they actually were to fly the country, nothing could more effectually answer the object of prosecuting them. Erskine in vain showed that the bill was wholly unnecessary, and was a dangerous innovation, as it proceeded from a systematic desire to put down the discussion of public grievances. I doubt whether Sir Vicary ever did more than hang it, *in terrorem*, over the heads of the old ladies against whom he filed his informations, because they happened to have annuities payable out of newspapers in consequence of family settlements; and although it still disgraces the Statute Book, certainly no Attorney General since his time has ever thought of putting it in force.

His indiscreet opinions on military matters.

When Erskine gave his opinion on military matters, although he had been a soldier in his youth, he by no means did himself so much credit. He considered it impossible that

* 10 Parl. Deb. 1320—1326.

we should be able to defend Portugal, much less drive the French out of Spain. When thanks were moved to the army after the battle of Corunna, while he praised the gallantry of Sir John Moore and the other British officers who had gloriously fallen there, he said, "but for their immortal renown, it would have been better for them—certainly much better for their country—to have shot them on the parade of St. James's Park." * He afterwards asserted, "the men who were sent to Spain were sent there to be massacred, without any prospect of their ever being able to do any good." † Nay, he held the same language after the battle of Talavera had been won, saying, "he would put an hypothetical case; suppose that the result of fighting a battle should be, although a victory was claimed, the failure of the main purposes of the campaign,—would it not be essential to have information with respect to the reasons for adopting that measure, before they voted thanks for a victory which had produced only disastrous consequences?" ‡ And afterwards, when the plan of establishing our ascendancy in the Peninsula was discussed, he said, "it might as well, in fact, be expected to accomplish this by sending over the woolsack, with my noble and learned friend upon it." §

May 15. 1809. His Bill to prevent cruelty to animals.

But leaving such vagaries, he almost entirely confined himself for some years to a subject which he made peculiarly his own, and with which his name will ever continue to be associated. Thus he began his speech, in moving the second reading of his bill "For the Prevention of Cruelty to Animals:"—"I am now to propose to the humane consideration of the House a subject which has long occupied my attention, and which I own to your Lordships is very near my heart. It would be a painful and disgusting detail if I were to endeavour to bring before you the almost innumerable instances of cruelty to animals which are daily occurring in this country, and which, unfortunately, only gather strength by any efforts of humanity in individuals to repress them without the aid of the law. These unmanly and disgusting outrages are most frequently perpetrated by the basest and most

* 12 Parl. Deb. 136. † 14 Ib. 169. ‡ 15 Ib. 107. § Ib. 534.

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worthless — incapable, for the most part, of any reproof which can reach the mind, and who know no more of the law than that it suffers them to indulge their savage disposition with impunity. Nothing is more notorious than that it is not only useless, but dangerous to poor suffering animals for a humane man to reprove their oppressors, or to threaten them with punishment. The general answer, with the addition of bitter oaths and increased cruelty, is, '*What is that to you?*' — If the offender be a servant, he curses you, and asks '*if you are his master?*' — and if he be a master, he tells you that '*the animal is his own.*' The validity of this most infamous and stupid defence arises from that defect in the law which I seek to remedy. Animals are considered as *property* only. To destroy or to abuse them, from malice to the proprietor, or with an intention injurious to his interest in them, is criminal — but the animals themselves are without protection — the law regards them not — they have no RIGHTS. I am to ask your Lordships, in the name of that God who gave to man his dominion over the lower world, to acknowledge and recognise that dominion to be a MORAL TRUST." — After enlarging on this topic with great beauty, and fully explaining the preamble and enactments of the bill, he observed: "As to the tendency of barbarous sports of any description whatsoever, to nourish the national characteristic of manliness and courage, — the only shadow of argument I ever heard on such occasions, — all I can say is this — that from the mercenary battles of the lowest of beasts — human boxers — up to those of the highest and noblest that are tormented by Man for his degrading pastime, I enter this public protest against such reasoning. I never knew a man remarkable for heroic bearing, whose very aspect was not lighted up by gentleness and humanity, nor a *kill-and-eat-him* countenance that did not cover the heart of a bully or a poltroon." * When the bill was in committee, he said, "During the thirty years of my parliamentary life I have never till now proposed any alteration in the law. I possess no ostentatious wish to couple a statute with my name, and on the present occasion your Lordship's will, I trust, give me credit for being ac-

* 14 Parl. Deb. 553.

tuated by a better motive. I venture to say firmly to your Lordships, that 'the bill I now propose to you, if it shall receive the sanction of Parliament, will not only be an honour to the country, but an era in the history of the world.'"

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Windham's speech against it.

The bill passed the Lords after a slight opposition from Lord Ellenborough, but was thrown out in the Commons by a speech of Windham's, who thus sneered at its author. "We ought to be cautious how we begin 'new eras of legislation,' and ought to have a reasonable distrust of the founders of 'eras,' lest they should be a little led away by an object of such splendid ambition, and be thinking more of themselves than of the credit of the laws or the interest of the community. To be the first who has stood up as the champion of the 'rights of brutes' is, indeed, a marked distinction. But I wish to know why, to tarnish his glory, he has excluded from protection animals not tamed or reclaimed; for one would have supposed that their '*rights*' were more unqualified and more unquestionable. It is said they are *feræ naturæ* — a learned distinction, but never before so whimsically applied. Again, we are told, if never treated with cruelty, they would become too numerous and *overrun the earth;* but how does this apply to a class of animals with which we are accustomed to make very free — *the fishes!* If it is to be a misdemeanour to beat a donkey, surely to crimp a cod, or to skin an eel, ought to be felony without benefit of clergy. What a pretty figure shall we make in the world, if in one column of a newspaper we read a string of commitments under the 'Cruelty to Animals Act,' and in another, the account of a grand *Battue* — attended by princes of the blood, and ministers of state — or of 'a glorious run, five horses only being in at the death, of fifty who started, — several having died in the field!' If the horses be within the purview of the statute, the hounds are not, and at all events the 'rights of the fox' are violated with impunity!"*

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Erskine again introduced his bill, with some amendments, in the next session, and it underwent much discussion, but

* 17 Parl. Hist. 1207.

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finding that he was not likely to carry it through the House of Commons, he withdrew it after it had passed the committee.*— When Windham was gone, and the passion for bull-baiting and boxing had subsided, it was introduced there by Martin of Galway, and finally, in Erskine's lifetime, received the sanction of the Legislature.† Independently of "the rights of brutes," which it may be difficult to protect by human laws, although the subject of religious and moral obligation, I think there can be no doubt that any malicious and wanton cruelty to animals in public, — outrages the feelings, — has a tendency to injure the moral character of those who witness it, — and may therefore be treated as a crime.

Bill afterwards carried.

A.D. 1810. Erskine's notions of "Parliamentary Privilege."

When the dispute arose upon the commitment of Sir Francis Burdett to the Tower, — yielding to the sin which most easily beset him, the love of popularity, — Erskine took a violent part against the House of Commons, and maintained that all questions of privilege ought to be decided by the courts of common law. He dwelt upon the danger of either House of Parliament exceeding its jurisdiction, — forgetting the danger which has since been exemplified, of judges, with the best intentions in the world, attempting to deprive the two Houses of Parliament of powers "essential to the due and effectual exercise and discharge of their functions and duties, and to the promotion of wise legislation."‡ In a very unnecessary ebullition of bravery, after referring to the fact of Chief Justice Pemberton being sent to Newgate by the House of Commons, he exclaimed, "If a similar attack were made upon my noble and learned friend who sits next me [Lord Ellenborough], for the exercise of his legal jurisdiction, I would resist the usurpation with my strength, and bones, and blood."§ Nay, he went so far as to lay down for law, contrary to repeated decisions of all the Courts in Westminster Hall, that a warrant of commitment by either House of Parliament must upon the face of it specify the particular facts alleged to constitute a breach of privilege, for the consi-

* 16 Parl. Deb. 726. 845. 881. 883. 1017.

† See stat. 3 Geo. 4. c. 71.; stat. 5 & 6 Wm. 4. c. 59.

‡ See 3 Vict. c. 9.

§ 16 Parl. Deb. 851.

deration of the Common Law Judges upon a writ of habeas corpus.* It certainly would be desirable, for public information, that such warrants were so drawn; but the pretension of judges to review the cause of commitment renders this course impossible, without subjecting all parliamentary privilege to their summary caprice,—and the established sufficiency of a warrant of commitment, generally alleging a breach of privilege, is the only practical security which the two Houses retain for the undisturbed enjoyment of the powers which they have hitherto exercised, and which the public good requires that they should continue to exercise. Although Erskine on various occasions so nobly repelled attacks on public liberty, I cannot hold him up as an accomplished jurist or a great authority in constitutional law.

June 5. 1810. He becomes more favourable to the Catholics.

I am happy to say that he gradually took a more liberal view of the claims of the Roman Catholics, and although he was not yet prepared to put them, as to civil rights, on an equal footing with Protestants, he supported Lord Donoughmore's motion for referring their petitions to a committee, saying, "The question now to be decided is—not whether the Roman Catholic religion be good or evil as a religion, but whether so long as it exists among so large a proportion of the population of Ireland, we are not called upon so to deal with its professors as to make them safe and sound members of the British empire." †

His neglect of the formation of the Penal Code.

I could have wished much, for his fame, that he had been more active in leading or assisting the efforts which now began strenuously to be made to soften the atrocious severity of our penal code: but I can only find that he once offered a few observations, and voted in a small minority, in favour of the bill for taking away capital punishment from the offence of stealing in a shop to the value of *five shillings*. ‡

The Regency under George IV. established.

The Whigs were again tantalised by the seemingly certain prospect of a speedy accession to power. In the end of the year 1810, the mental illness of King George III. was so aggravated that it could not be concealed from the public, and the functions of the Executive Government could not be

* 17 Parl. Deb. 588. 598. † Ib. 395. ‡ Ib. 198.

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carried on without the intervention of Parliament. The belief became general, which was verified by the event, that his Majesty was now permanently disabled from personally performing the duties of his high office. Notwithstanding the democratic doctrine adopted in 1788, that on such an emergency the two Houses of Parliament were entitled to elect any individual at their pleasure as Regent, and to confer or withhold from him any of the prerogatives of the Crown, it was easily foreseen that the Heir Apparent would soon be to all practical purposes upon the throne. After a little vacillation, in consequence of a supposed revolutionary movement in the country at the commencement of the war, he had remained true to the political party to which he attached himself in his youth; and at this very time he was living on terms of the most familiar intimacy with the leaders of it — talking to them of the distribution of the great offices of state among them as soon as they were his to bestow. Erskine in particular was in high favour with him, and when they met, his Royal Highness, without loss of dignity, laying aside court etiquette, addressed him by the endearing appellative of TOM. If the Ex-Chancellor again desired the Great Seal, it seemed within his reach.

Erskine's opinion on the right of the Heir Apparent.

Upon the question as to the mode of proceeding to supply the deficiency in the exercise of the royal functions, he laid down what I consider the true doctrine — that the two Houses, as the states of the realm, should find and declare the fact of the incapacity of the Sovereign, and that then the Heir Apparent, by right of birth, should carry on the government while that incapacity continues. He said, "Not having been in Parliament in the year 1788, I had not then an opportunity publicly to declare my sentiments upon the subject, but I considered it most anxiously and deliberately, and I came to the conclusion that the power of election, arrogated to themselves by the two Houses of Parliament, is wholly inconsistent with the principles of hereditary monarchy, and may lead to all the horrors of civil war. There is no analogy between this case and the Revolution of 1688; for then the throne was vacant, and the two Houses were driven by ne-

cessity to fill it by calling in a new dynasty. But the throne is not now vacant, and the two Houses have no jurisdiction to assume or to change the royal authority." This short statement seems absolutely conclusive against the proceeding by bill; for that proceeding cannot take place without the direct assumption of the royal authority, however strongly this usurpation may be disavowed. The Great Seal is not the organ of the two Houses, but of the King only. The Great Seal is used in judicial proceedings by virtue of the King's general authority; but for such solemn acts of state as opening Parliament, or giving the royal assent to bills, it is the symbol of the King's mind and intention, signified by the indispensable sign-manual. To employ the Great Seal for such purposes by the two Houses of Parliament is, therefore, a manifest violation of the Constitution. The proposed plan assumes the power of the two Houses to exercise the royal power during the King's incapacity — by which evil men may introduce confusion — not to terminate with one generation. This is no visionary fancy; the Constitution has fallen a sacrifice to the principle of separating the political power from the natural person of the sovereign, and may again lead to the levy of armies in his name to fight against him."*

He opposes restrictions on the Regent.

When the restrictions to be put upon the Regent came to be discussed, Erskine strenuously opposed them, contending that they were wholly unnecessary for the purpose of ensuring his Majesty's resumption of his royal authority on his recovery; and he denounced the prohibition against promotions in the peerage as particularly disrespectful to that House, because they conveyed an insinuation "that their Lordships were ready to barter their allegiance against additional balls or strawberry-leaves for their coronets."

Question as to *proxies*.

On the clause respecting the patronage of the household, the Government was beaten by a small majority in the committee, where proxies could not be used; and proxies being called on the "Report" to reverse this decision, the question arose, whether, under the circumstances, the right of voting

* 18 Parl. Deb. 72.

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by proxy at all existed. Erskine contended that their Lordships were not sitting as a House of Parliament under the sanction of the King, so that the custom of voting by proxy did not apply; and, at any rate, that the custom, being always under the control of the House, ought not to be permitted on this occasion; "for what could be more calculated to bring it into utter contempt, and to cover it with the derision of the public, than to see a most momentous question decided by a majority of the Lords present, at the end of long arguments, and in ten minutes afterwards to see that decision reversed by the very same assembly, without an additional living man coming into the House, by the proxies of absent lords, who, had they been present and heard the arguments, would very probably have confirmed the decision which they were supposed to condemn." The Earl of Liverpool was so much ashamed, or so much afraid, of an adverse division, that he withdrew his call for proxies, and the clause, as amended in the committee, stood part of the bill.*

Clause to exclude Lord Eldon from the Queen's council.

Another violent altercation took place on Lord King's motion, that Lord Eldon should be excluded from being a member of the Queen's council to assist her in taking care of the King's person, — on the ground that he had frequently obtained the King's signature for commissions when his Majesty, on account of mental disease, was under the care of physicians, who declared that he was incompetent to act. Erskine did not speak on this very delicate topic, but he voted for the motion, and joined in a strong protest against its rejection†, setting forth the instances in which this practice had been followed, and concluding with the allegation, that "John Lord Eldon, having so conducted himself, is not a person to whom the sacred trust of acting as one of her Majesty's council in the care of his Majesty's person, and in the discharge of the other most important duties committed to the said council, can with propriety or safety be committed."

The Regency Act having received the royal assent by means of the "phantom," or sham commission ordered by the two Houses of Parliament, in the King's name, the Whigs

* 18 Parl. Hist. 786. 805. 976. † 18 Parl. Deb. 1086.

Feb. 1811. The Regent continues the Tory Ministers in office.

expected to be in office next morning; but, instead of a summons to attend the Regent at Carlton House, they received certain intelligence that his Royal Highness had written a letter to Mr. Perceval, intimating that "he felt it incumbent upon him, in the present juncture, not to remove from their stations those whom he found there, as his Majesty's official servants." An attempt was made to soften this disappointment, by holding out a hope, which proved to be illusory, that, as soon as the period of restrictions had expired, and the Regent could freely follow his own inclination, he would get rid of the Ministers with whom he had been constantly at enmity, and by whom he considered himself personally ill used, for the purpose of forming a close and permanent connection with his early friends. Erskine was not deluded by any such prospects, and soon perceived that his old patron had now contracted a mortal aversion to the Whigs and their principles, and was as firmly resolved as ever his father had been to prevent them from obtaining power.

CHAPTER CLXXXVII.

CONTINUATION OF THE LIFE OF LORD ERSKINE TILL THE GENERAL PEACE IN 1815.

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A.D. 1811.

Erskine withdraws from public life, and becomes an idler.

FROM this time our Ex-Chancellor seems to have renounced all thoughts of official employment, and to have become rather indifferent about the estimation in which he was held as a public man. He had paid very little attention to the judicial business of the House of Lords since his resignation, and now he was seldom present at its political discussions. Giving up all professional reading, and without any serious occupation, he led the idle life of a man of wit and pleasure about town,— spreading hilarity and mirth wherever he appeared,—seemingly cheerful and happy himself,—but spending many listless and melancholy hours in private,—sometimes mixing in scenes which his friends heard of with pain, and which brought upon him distress as well as discredit.

He as yet retained his beautiful villa at Hampstead, near Caen Wood, called "Evergreen Hall." Here he gave gay parties, of which he was the life by his good-humour and whimsicalities. We have a lively description of one of these from Sir Samuel Romilly, to whose gravity they were not quite suitable:—"I dined to-day at Lord Erskine's. It was what might be called a great Opposition dinner: the party consisted of the Duke of Norfolk, Lord Grenville, Lord Grey, Lord Holland, Lord Ellenborough, Lord Lauderdale, Lord Henry Petty, Thomas Grenville, Pigott, Adam, Edward Morris (Erskine's son-in-law), and myself. This was the whole company, with the addition of one person; but that one, the man most unfit to be invited to such a party that could have been found, if such a man had been anxiously looked for. It was no other than Mr. Pinkney, the American

Romilly's account of one of his dinners.

Minister—this at a time when the Opposition are accused of favouring America to the injury of their own country, and when Erskine himself is charged with being particularly devoted to the Americans. These are topics which are every day insisted on with the utmost malevolence in all the Ministerial newspapers, and particularly in Cobbett. If, however, the most malignant enemies of Erskine had been present, they would have admitted that nothing could be more innocent than the conversation which passed. Politics were hardly mentioned, and Mr. Pinkney's presence evidently imposed a restraint upon every body. Among the light and trifling topics of conversation after dinner, it may be worth while to mention one, as it strongly characterises Lord Erskine. He has always expressed and felt a great sympathy for animals. He has talked for years of a bill he was to bring into Parliament to prevent cruelty towards them. He has always had several favourite animals to whom he has been much attached, and of whom all his acquaintance have a number of anecdotes to relate:—a favourite dog which he used to bring, when he was at the Bar, to all his consultations,—another favourite dog, which, at the time when he was Lord Chancellor, he himself rescued in the street from some boys who were about to kill under pretence of its being mad,—a favourite goose, which followed him wherever he walked about his grounds,—a favourite mackaw,—and other dumb favourites without number. He told us now that he had got two favourite leeches. He had been blooded by them last autumn when he had been taken dangerously ill at Portsmouth; they had saved his life, and he had brought them with him to town,—had ever since kept them in a glass,—had himself every day given them fresh water, and had formed a friendship with them. He said he was sure they both knew him, and were grateful to him. He had given them different names, HOME and CLINE (the names of two celebrated surgeons), their dispositions being quite different. After a good deal of conversation about them, he went himself, brought them out of his library, and placed them in their glass upon the table. It is impossible, however, without

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the vivacity, the tones, the details, and the gestures of Lord Erskine, to give an adequate idea of this singular scene."*

1807–1815.

His horticultural pursuits.

The Ex-Chancellor used (but I believe only when he expected his friends to detect him in the act) to take a spade in his hand and pretend to work in his kitchen garden. On such occasions he would say, "Here I am enjoying my 'otium cum *diggin a taity.*'"— The garden was under the care of a Scotch gardener, who once coming to complain to him, as of grievance to be remedied, that the drought had burnt up all the vegetables and was killing the shrubs, he said to him, "Well, John, all that I can do for you is, to order the hay to be cut down to-morrow morning; and if that does not bring rain, nothing will." — He encouraged the jokes of others when even a little at his expense. Boasting of his fine flock of Southdowns, he joined in the laugh when Colman exclaimed, "I perceive your Lordship has still an eye to the *Woolsack.*"

His manufactory of brooms.

He afterwards parted with his property at Hampstead, and bought an estate in Sussex, which turned out an unfortunate speculation, for it produced nothing but stunted birch trees, and was found irreclaimable. To lessen his loss, he set up a manufactory of brooms. One of the men he employed to sell them about the country being taken before a magistrate for doing so without a licence, contrary to the "Hawkers and Pedlars Act," he went in person to defend him, and contended there was a clause to meet this very case. Being asked which it was, he answered, "The *sweeping* clause, your worship — which is further fortified by a proviso, that 'nothing herein contained shall prevent or be construed to prevent any proprietor of land from vending the produce thereof in any manner that to him shall seem fit.'"

His progress in the study of agriculture.

With a view to improve this property, he began to study farming, and put himself under the celebrated agriculturist Coke of Norfolk, afterwards Earl of Leicester, observing, that "having been instructed by *Coke* at Westminster, he was now to be instructed by *Coke*, as great a man in his way, at Holkham." But the master boasted little of the pupil, relating this anecdote of his progress: — "Coming to a finely

* Life of Romilly, ii. 233.

cultivated field of wheat, the first specimen he had seen of drill husbandry, Erskine exclaimed in a delighted tone, "What a beautiful piece of *lavender!!!*"*

His visits to Westminster Hall.

By way of lounge, he would not unfrequently come to Westminster Hall, to chat with his old friends — ever expressing regret that he had left the Bar. Once he jumped on the table in the robing-room, and said in a pitiful tone, "Here is the first day of term, and I have not a single brief in my bag."—I remember, on another occasion, when a group of us gathered round him to hear his stories, we flattered him much by asking him to introduce into his "Cruelty to Animals Bill," a clause "for the protection of JUNIORS" — telling him truly, that we had suffered much bad treatment since he had left us.—Remaining a Bencher of Lincoln's Inn, he often dined in the Hall, and was much more light-hearted than when he sat there with the Great Seal before him.—Yet, when pinched by returning poverty, he would occasionally think with regret of the very short period he had enjoyed his lucrative office. Captain Parry, the famous navigator, being asked at a dinner party, what he and his crew had lived upon when they were frozen up in the Polar Sea, said, "they lived upon *Seals*." "And very good living too," exclaimed Erskine, "*if you keep them long enough.*"

SEALS good living, if *kept long.*

Honour due to the Dignitary who *wears his wig for life.*

Soon after his resignation, he was invited to a fête at Oatlands, where the Duchess of York had upon the lawn a number of rare animals, and, among others, a remarkable black monkey with a long white hairy mantle flowing gracefully over his head and shoulders. Erskine was late in appearing; but, at last, while the Prince of Wales, the Duke of York, and other royal personages, were standing in a group near the entrance to the court-yard, he arrived in a very mean-looking one-horse chaise. He immediately alighted; but, instead of paying his duty to the "Royalties" before him, he suddenly stepped up to the monkey; and, taking off his hat in a very dignified manner, and making three *congées*, he addressed the animal in these words, amidst

* I once puzzled a legal friend of mine, who said he should certainly know *oats* from *wheat* if he saw them growing together, by asking him if he should know *barley* from *malt* if he saw them growing together? He said he thought he should, but he was not quite so sure.

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the hearty laugh of all present: "Sir, I sincerely wish you joy — *You wear your wig for life.*" *

1807-1815.

How he *cut* "the Stakes."

He used to dine occasionally at the "Stakes" — saying, that he had once consulted a Bishop, whether it was lawful for him, an Ex-Chancellor, to do so, and received this oracular answer, "*Cut* them," which he thought himself bound to take *in mitiori sensu.*

He frequently presided at the ceremony of laying the foundation stone of buildings for literary institutions, and at the aniversary dinners of societies of all sorts — when he used to make very amusing speeches, which the audience were not sorry to find often embellished with anecdotes of himself. I remember being present at an address from him to the members of the Law Life Insurance Society, at the Free Masons' Tavern, when he gave us this account of one of his earliest opinions: "A case was laid before me by my veteran friend the Duke of Queensberry — better known as 'old Q.' — as to whether he could sue a tradesman for a breach of contract about the painting of his house? and all the evidence he had to adduce was detailed — which was wholly insufficient: — Whereupon I wrote, "I am of opinion, that this action will *not lie*, unless the witnesses *do*."

A legal opinion by Erskine when at the Bar.

His change of hours.

He was at all fashionable breakfasts and balls of peculiar éclat; and whereas formerly he had risen at five in the morning to sit down to his briefs, before the ladies of his family had returned from such parties, it was now sometimes later before he went to bed, — and at any hour next day he might have adopted the excuse of Thomson the poet, "Why should I get up when I have nothing to do?"

"Spots on the sun."

"Idleness of mind," says Burton in his ANATOMY OF MELANCHOLY, "is the nurse of naughtiness, the step-mother of discipline, the cushion upon which the devil reposes, and a great cause of melancholy." Erskine's present mode of life, I am afraid, was no exception to the general rule — but his frailties were never obtruded on the world, and I am not

* On the authority of a gentleman still alive, who was present. The Oatlands Monkey was a specimen of the Simia Rosalia — "small red feet — hair very fine, soft, long, of bright yellow colour, resembling yellow silk, — round the face hair much longer than in other parts, so as to form a large mane like that of a lion — native of Guiana — the *Marikina* of Buffon."

bound to pry into them. When they were alluded to,—as he still displayed so many fine qualities, mankind were disposed to repeat the words of Lord Kenyon, applied to him in former times, "Spots on the sun!—spots on the sun!" although, as it has been observed in no unfriendly tone, "as the lustre of the luminary became more dim, the spots did not contract in their dimensions."*

Erskine's "Armata."

Erskine now sought to relieve his *ennui*, and to recover his consequence, by becoming an author, and he published an octavo volume under the title of "ARMATA." This is a close imitation of "Utopia" and "Gulliver's Travels," but is very inferior to those immortal productions, though by no means without cleverness. The narrator is supposed to have been shipwrecked, and getting somehow into another planet, to have reached a very distant region called "ARMATA" (England), with a neighbouring island under the same government, called "PATRICIA" (Ireland)—having for its great rival in power another state, called "CAPETIA" (France). There are two Parts,—one historical and political,—the other describing manners and customs. I will copy a few extracts from it, to convey a notion of its contents, as the book is now very scarce. In an attempt to show that if the French revolution had been treated differently by foreign nations, its excesses would not have been provoked, and war might have been avoided, he thus introduces the great patriot of "ARMATA"—who is no other than Charles James Fox:

His character of Fox.

"My confidence in this opinion," says the personage who is giving us an insight into Armatan politics, "is the more unshaken from the recollection that I held it, at any time, in common with a man whom to have known as I did would have repaid all the toils and perils you have undergone. I look upon you, indeed, as a benighted traveller, to have been cast upon our shores after this great light was set. Never was a being gifted with an understanding so perfect. He was never known to omit any thing which, in the slightest degree, could affect the matter to be considered, nor to confound things at all distinguishable, however apparently the same; and his conclusions were always so luminous and con-

* Lord Brougham's Statesmen, i. 244.

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vincing, that you might as firmly depend upon them as when substances in nature lie before you in the palpable forms assigned to them from the foundation of the world. Such were his qualifications for the office of a statesman: and his profound knowledge, always under the guidance of the sublime simplicity of his heart, softening without unnerving the giant strength of his intellect, gave a character to his eloquence which I shall not attempt to describe, knowing nothing by which it may be compared. Had the counsels of this great man been accepted,—much more if he himself had lived to carry them into execution with his eminent companions,—I must ever think that the peace of our world might have been preserved." Thus our traveller, in the name of "Morvin," giving an account of the Armatans, shadows forth Burke, and the state prosecutions launched most oppressively by the two Houses of Parliament in the year 1794, when he himself acquired such glory: "Alas! the very voice which had breathed so happily the gentle accents of peace, was now heard louder than the trumpet of war to collect our world to battle,—spreading throughout the land an universal panic, until the public councils complained of sedition. Instead of leaving it to the Sovereign, in the ordinary course of law, to bring the suspected to trial, they exalted it into treason of the highest order, and the evidence was published by their command. It was, no doubt, within their jurisdiction, and it was their highest duty to protect the state,—to proclaim a conspiracy if they believed it existed, and to direct prosecutions against the offenders; but it was repugnant to the very elements of the Armatan constitution to involve individuals in the accusations, and to circulate amongst the people the accusing testimonies, stamped with their supreme authority, when inferior tribunals were afterwards to judge them. In any other country the consequences to the accused must have been *fatal:* but there is a talisman in Armata, which, while it is preserved inviolate, will make her immortal!—HER COURTS OF JUSTICE SPOKE ALOUD TO HER PARLIAMENT: THUS FAR SHALT THOU GO, AND NO FARTHER." I ought

His reference to the State Trials of 1794.

to mention that, from modesty, not a word is introduced respecting the great ADVOCATE, in whose hands the "talisman" was so powerful.

His compliment to the Duke of Wellington.

He made ample amends in a subsequent edition for the slight the author had cast upon Wellington's early career. Morvin, in alluding to a fight which we easily discover to be WATERLOO, says: "The hardy sons of Patricia were in all our ranks, and her soil produced the immortal hero who conducted the battle. No victory in human annals ever produced results so sudden and extraordinary. The adversary, who had built a thousand vessels to convey his armies to our shores, and who was then erecting a column, *even within our view*, to be crowned with his colossal statue, pointing at us with his finger for his own, now fled when no one was pursuing, and gave himself up as a prisoner to the commander of a single ship."

His very bad political economy.

I am sorry to say that Morvin's political economy is exceedingly bad, although supposed to be very sound by the author, and meant to guide us in England. He strongly reprobates the importation of foreign wool or foreign corn, as well as of any foreign manufactured goods; he is not contented with *protection*, but would have *bounties;* and he scouts the doctrine that population can ever be excessive, thus concluding: "Be assured that the very being of your country, *above all at this moment*, depends upon your making your own soil support your most extended population; and that to consider population as an evil is to be wiser than God, who commanded man to *increase and multiply*." Erskine, however, knew as much about these matters as Sheridan, Grey, or Fox himself. Of that generation of statesmen, Pitt alone had studied Adam Smith.

His recommendation of official costume.

I am surprised to find the following recommendation of wearing official costume in general society from Erskine, who, above all his contemporaries, appeared to despise formality and humbug: "We have," said Morvin, "robes of magistracy even in the lowest of our Courts; and not only our Judges, but all their inferior officers and attendants, have grave and suitable habits of distinction, but which are cast off the moment

the business of our councils and courts is over; when the highest of them are to be seen shouldered and jostled in the crowd, with the pickpockets whose imprisonments have just expired, and with the culprits they have amerced. This is by no means an ancient custom amongst us, but one of late years, most ignorantly and thoughtlessly introduced. Supreme Judges, and, indeed, magistrates of every description, — above all, when coming immediately and publicly from their tribunals, should have some suitable distinctions to point out their stations, and to continue, by habits of association, the reverence inspired by their dignified appearance when administering the government or the laws." "Then," adds the traveller in his own person, "I could not help smiling to myself at the ludicrous idea of all Palace Yard in an uproar at the astonishing sight of our Judges coming out of Westminster Hall in such shabby frocks and brown scratches, as would infallibly subject them to be rejected as bail in their own Courts, even for 10*l.*, though they were to swear themselves black in the face."

His defence of sinecure places.

Thus he boldly censures the abolition of ancient sinecure offices: — "To say they are useless because they have no useful duties, may be a false conclusion. A critic of this description might reason in the same manner with nature, and accuse her of the most senseless profusion, for dressing out a cock pheasant and a peacock quite differently from a jackdaw or a crow. How unmercifully those poor birds would be plucked! Not a feather would be left in their *sinecure* tails!"

He pathetically laments the loss of his "Cruelty to Animals Bill:"—"It went down almost by acclamation to the other council for its assent, where its success would have been equally certain if the resolutions of public assemblies were invariably the result of general convictions; but as the bravest armies have been put to flight by the panic of a single soldier, so the wisest councils, by the influence of individual error, may be turned out of the course of wisdom." He then goes on to have his revenge of Windham, on whom he charges "*monomania, or insanity quoad hoc.*"

He concludes the book in a strain of philosophical piety, by

which I believe he was systematically animated, notwithstanding the occasional levity of his conversation or his conduct. After calculating that at the swiftest rate of travelling then known, it would take ninety-one millions of years to reach the nearest of the fixed stars, he thus proceeds: —"When I reflect that God has given to inferior animals no instincts nor faculties that are not immediately subservient to the ends and purposes of their beings, I cannot but conclude that the reason and faculties of man were bestowed upon the same principle, and are connected with his superior nature. When I find him, therefore, endowed with powers to carry as it were the line and rule to the most distant worlds, I consider it as conclusive evidence of a future and more exalted destination, because I cannot believe that the Creator of the universe would depart from all the analogies of the lower creation in the formation of his highest creature, by gifting him with a capacity not only utterly useless, but destructive of his contentment and happiness, if his existence were to terminate in the grave."

His beautiful argument for the immortality of the soul.

"Armata" came out first anonymously, but the author avowed himself to his friends, and was well satisfied with his performance. He accompanied a presentation copy with the following note to Colman: —

"Dear Sir,

"As men of real genius are always the most indulgent critics, I send you my little romance without fear. The two parts are very different. The first was intended to be a kind of bolus to swallow my old politics in, which were too long past to be a political pamphlet; and having gone out of this our world without going to that from whose bourne no traveller returns, I was obliged to come back again to town, describing it, however, as if in the world I had just left. I should like to know whether you think my remarks upon the stage are correct.

His letter to Colman, accompanying a copy of Armata.

"Yours most faithfully,

"Erskine."

Dr. Parr pronounced the romance to be most valuable, and Erskine's name carried it through several editions: but as the story is devoid of novelty or interest, and the great bulk

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of the observations are without much wit or point, it soon fell into neglect.

A. D. 1812. Erskine's continued steadiness to his party and his principles.

The year 1812 seemed propitious to the prospects of the Whigs, and Erskine was often congratulated on his certain and speedy return to office. At the expiration of the restrictions imposed upon the exercise of the royal authority by the Regency Act, the Regent, through the Duke of York, professed a desire that "some of those persons with whom the early habits of his public life were formed would strengthen his hands and constitute a part of his Government," but it was found that this was only to be under the ascendancy of his new friends, Lord Eldon and Mr. Perceval; and Lords Grey and Grenville declared the impossibility of their uniting with the present Government, as their differences of opinion were too important to admit of such an union; and in particular, the first advice they should tender to his Royal Highness would be to repeal those civil disabilities under which so large a portion of his Majesty's subjects still laboured on account of their religious opinions. In a debate in the House of Lords on this correspondence, Erskine said, "Happy should I have been, and ever shall be, to manifest my attachment to the Prince. I stand in a peculiar relation to his Royal Highness; I have been in his service for thirty years, and have received many marks of kindness and confidence from him, and as I consider steadiness in friendship to be the source of all honour and usefulness, public and private, I am anxious to explain why it is not in my power, consistently with the attachment I must ever retain for the Prince, or the duty I owe to my country, to give the smallest support to the present Administration." After taking a very able view of their policy, domestic and foreign, he observed, that "if a cabinet were to be formed by the proposed union, like *plus* and *minus* in equations, they would destroy one another; — one half determined upon a perpetual exclusion of the Catholics — the other half convinced that to refuse the claims of the Catholics was to dissolve the Empire; — one half resolved to keep up the Orders in Council — the other half thinking that the Orders in Council were unjust to neutral na-

March 19. 1812.

tions, and ruinous to our own commerce and manufactures. I deeply lament the present inauspicious state of affairs; but as there is no unmixed good in this world, there is seldom evil unmixed with good, and some advantage may arise out of the present conjuncture; it will furnish an unanswerable, and I hope a final, refutation of one of the falsest and most dangerous opinions which can be propagated among the lower orders of the people — that their superiors are all alike — all equally corrupt — all looking only to office by the sacrifice of all principle. The public may now be convinced, that what has been too frequently and invidiously stigmatised as *party*, may be better described as an honourable and useful union of men, of great talents and influence, esteeming one another in private life, and pledged to their country and to each other by similar political principles. I am persuaded, that a firm phalanx of such men, who have acquired general confidence, which they can only hope to preserve by sacrificing their own advancement to the interests of the people, is one of the most important safeguards of the British constitution." In a subsequent part of the debate, he said, by way of explanation, "I should have approved of all that was proposed by the Cabinet of which I was a member, and much more than from circumstances they could venture to propose, had I not thought that, from the King's prejudices, this course would dissolve the Administration. ['Hear! hear!' from the other side of the House.] I am glad of that cheer — I laid a trap for it, — as it most strikingly marks the general disposition to impute to public men the love of office as the ruling principle of their conduct. Surely this error is now refuted." Upon a division, however, the Government had a majority of 165 to 93.*

May, 1812. Assassination of Mr. Perceval.

Three months afterwards arose another Ministerial crisis on the assassination of Mr. Perceval, when Erskine again behaved with spirit and disinterestedness. The Whig leaders were offered the power of forming an entirely new Cabinet, on a condition to which it was known they could not accede, — that the officers of the household should not be changed. Although this novel and unconstitutional arrangement was

* 22 Parl. Deb. 62. 69. 89.

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Erskine defends Lords Grey and Grenville for refusing to take the Government without appointing the officers of the household.

defended by the Earl of Moira, and even by Sheridan, Erskine stoutly asserted that "Lords Grey and Grenville were bound to see that they had all the facilities and securities which were usual upon changes of Administration, to enable them to carry on the functions of Government with effect."*

During the five following years, Erskine never opened his lips in Parliament. Lord Liverpool, much ridiculed when a young man for his proposed "March to Paris," and certainly one of the dullest of men, was now Prime Minister, and under him our military operations on the continent of Europe were more brilliant than under any of his predecessors since the time of Godolphin. Opposition almost entirely ceased, and all orders and parties joined in the effort to maintain our independence against the ambition of Napoleon.

During this long interval, Erskine devoted himself almost entirely to the enjoyments of private society; but of the space which he still occupied in the eyes of mankind, we may judge from the following entries respecting him in the Diary of Lord Byron: "On Tuesday dined with Rogers, Madame de Stael, Mackintosh, Sheridan, Erskine, Payne Knight, and others. Sheridan told a very good story of himself and Madame Recamier's handkerchief. Erskine a few stories of himself only." . . . "Lord Erskine callèd and gave me his favourite pamphlet, with a marginal note and corrections in his handwriting.—Sent it to be bound superbly, and shall treasure it." . . . "Lord Erskine called to-day. He means to carry out his productions on the war, or rather wars, to the present day. I trust that he will. Must send to Mr. Murray to get the binding of my copy of his pamphlet finished, as Lord Erskine has promised me to correct it, and add marginal notes to it. Any thing in his handwriting will be a treasure, which will gather compound interest from years. Lord Erskine thinks the Ministers must be in peril of going out. So much the better for him."†

March, 1814. Lord Byron and Erskine.

* 23 Parl. Deb. 346. 596.

† This copy, now belonging to my friend Mr. Murray, of Albemarle Street,

Erskine's culpable indifference about law reform.

The Ex-Chancellor's abstinence from mixing in political debates at such a season might be proper; but his neglect of law reform cannot be palliated. Romilly, in his Diary, says, under date 20th June, 1814, "Lord Erskine told me on Saturday that he should certainly bring on my bill, which he has taken charge of, on this day. He had not, however, given any notice of his intention, or required that the Lords should be summoned; and though he had formerly presided in the House as Chancellor for above a year, he was ignorant, till he learned from me, with surprise and evident mortification, that a previous notice was, according to constant usage, necessary before he could move the second reading of any bill." And again, under date 5th March, 1815: "I called this morning on Lord Grenville to endeavour to prevail upon him to take the charge, in the House of Lords, of my bill for subjecting freehold estates to the payment of simple contract debts: for if it continues this year, as it was the last, in the hands of Lord Erskine, who does not understand the subject, and is incapable of answering any objections that are made to it, there is no chance of its being carried." *

He becomes a Knight of the Thistle.

I cannot, however, join in the censure of the Ex-Chancellor's political conduct at this period. He had, excusably, although not magnanimously, accepted an unsolicited and unexpected offer, made to him out of personal regard by the Regent, of a "green ribbon;" and I am afraid he was rather too much gratified in wearing it, and showing in public the star of the

lies before me. It contains the following memorandum in the handwriting of Lord Erskine:—

"I have no other copy of the pamphlet but this spurious edition — full of gross errors. After Debrett had become a bankrupt, having published forty-eight editions, the present edition appears to have been published, with a print which I am sanguine enough to hope was intended as a caricature. [1] E."

There are added the two following memoranda in the handwriting of Lord Byron:—

"The correction and erasures in this volume are made by Lord Erskine's own hand, previous to his honouring me with the present of this volume.

"Oct. 12th, 1814. B."

"This copy was given to me by Lord Erskine, in November (I think), 1813.

"Oct. 15th, 1814. B."

The corrections are few and immaterial.

* Life, iii. 141. 156.

[1] The print, although a likeness, is certainly by no means flattering.

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order of the Thistle on his breast.* But while the affair was creditable to the one party, I do not think that it ought to derogate from our respect for the other. At a recent public dinner, Erskine, in commenting on the arbitrary policy of the existing Government, had entered into a warm defence of "those principles which had placed the House of Brunswick on the throne of Great Britain;" and his Royal Highness, on reading a report of this speech in the newspapers, had observed, "They are principles which would unseat any family from any throne."—However, as upon Napoleon's escape from Elba, the new Knight concurred, with almost the whole of his party, in supporting the preparations for renewing the war, he is thus disparagingly noticed by Romilly: "Erskine, who has lately accepted a green ribbon from the Regent, voted with the Ministers, but did not speak. One might have expected, however, that he would have explained how it happened that his opinions now were so different from those which he entertained during the last war, and which he published in a pamphlet that had great celebrity. This pamphlet I remember his carrying with him to Paris after the Peace of Amiens, and giving to a number of persons there, telling every one of them that there had been still later editions than that which he gave them, which was the twenty-sixth, or some other great number, for I do not recollect exactly which it was." But whatever doubts might be entertained of the necessity for carrying on the war with the French Republic, almost all were convinced that peace with the Emperor was now impossible.

He is attacked by "An Elector of Westminster."

Having published a pamphlet in vindication of the Whigs, he was answered in "A Letter from an Elector of Westminster," who thus assailed him: "It was on the 9th of November, 1794, that I harnessed myself to the carriage of the Hon. Thomas Erskine, when that distinguished barrister was drawn through the streets of the metropolis amidst the

* It should likewise be recollected that this was the fulfilment of the prophecy he had uttered when crossing the blasted heath forty years ago, as related by Lord Commissioner Adam. *Ante*, p. 403.

blessings and the tears of a people whom he had saved from the gripe of oppression. . . . No time, no, nor your Lordship's subsequent conduct, shall obliterate your share in the glorious struggle that gave a breathing-time to the last defenders of their country. The congratulations belonged to the rescued prisoner, but the praise was all your own; you were the saviour of the innocent, the restorer of liberty, the champion of law, of justice, and of truth. Dazzled by your eloquence — animated by your courage — sympathising with your success — your fellow-countrymen sunk under their admiration, their gratitude, and their joy, and bowed down before the idol of their hearts. My Lord, you should have died when you descended from the triumph of that memorable day. The timely end, which is the sole protection against the reverses of fortune, would have preserved you from that more lamentable change which could have been occasioned only by yourself. Had your life closed with the procession, you would have gone down to posterity pure and entire. As it is, your admirers have nothing left for it but to separate your early career from your present state, and to look at the record of your former exploits as belonging more to history than to you." He then enumerates specifically the imputed misdeeds down to the acceptance of the green ribbon.

His defence for accepting the "green ribbon."

Erskine published an answer, — from which I copy his characteristic defence upon the last accusation: "To this vulgar jest I reply, that if the author holds in republican contempt the most ancient distinctions of a monarchical state, he is undoubtedly well justified in considering the green ribbon as a laughable thing; but he fails altogether when his wit is not pointed at that *knighthood*, but *personally against me*. It is well known that the order of the Thistle is a distinction for the nobility of Scotland; and that ever since the Union it has been the custom to invest with it two English Peers. Now, as the author repeatedly taunts me with my STUART ancestors, he, perhaps, has inadvertently let down the force of the sarcasm he aimed at; because I am of the family of the King who instituted the order, and had been for many years in the service of the present Sovereign, it seems difficult to

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find fault, either with the Prince Regent for bestowing it on me, or to make out my disqualification to receive it; but if the insinuation was pointed to convey that the accepting it was a departure from my principles or friendships, I hold the slander in the utmost contempt, because my whole life is its unanswerable refutation. I stood towards the Prince Regent in a relation quite different from that of my friends in Parliament, having been in his Royal Highness's service from the first formation of his establishment. The appointment of those Ministers who still continue in office might for a season produce a corresponding coolness among public men, but which could not, with any propriety, involve *me*, from my particular situation, and from many personal obligations. I was bound to fulfil *all my duties*. I remained, and still remain, faithful to the Prince of Wales, but faithful alike to my principles and friends, — defying any man, as I now do, to charge me with the slightest deviation from the most perfect integrity and consistency as a member of Parliament for nearly forty years. I value the distinction alluded to, because it was a fit one of my rank and birth; and I value it the more, because it was given to me by the Prince as a mark of his personal regard, and without any wish or expectation that it could at all affect my public conduct. So much for the 'Green Ribbon,' — which I have only at all adverted to because I will not suffer even a squib to come across the unsullied path of my public life without publicly treading it out."

His letter on the publication of Fox's speeches.

A collection being published about this time of the speeches of his great leader, to whom he had ever been faithful, and to whose memory he was most affectionately attached, he thus addressed Mr. Wright, the editor: "The expression of my regret that the utmost care and attention could give but a very faint representation of their merit is, however, no preface to my wishing they should be suppressed. Far from it. It would be an absurd objection to a bust of Demosthenes or Cicero, that the vigor of the eye was lost in the marble, and the lips cold and silent, which were the sources of his fame. It would be as strange a cri-

ticism in a cabinet of natural history, that rare animals, however ingeniously preserved, were but feeble representations of them when living,—that though we observed the form of a lion, we could not hear him roar, nor see him stalking over the desert in the tremendous majesty of his dominion,—or that though we could not but admire the form and plumage of an eagle, we should account it nothing, because his vast wings were not in motion, nor his prey flying dismayed under their shadow. Eloquence, which consists more in the dexterous structure of periods, and in the powers of harmony of delivery, than in the extraordinary vigor of the understanding, may be compared to a human body, not so much surpassing the dimensions of ordinary nature, as remarkable for the symmetry and beauty of its parts. If the short-hand writer, like the statuary or painter, has made no memorial of such an orator, little is left to distinguish him;—but in the most imperfect reliques of Fox's speeches the bones of a giant are to be discovered. I cannot but look back as to the highest and most honourable circumstance of my life, that I thought and acted with Mr. Fox through so considerable a part of his time, and that now in my retirement from the world (for so I have considered it, since my professional course has been closed for ever) I have had the opportunity of thus publicly expressing my veneration for his memory. When I followed him to the grave, I was unable from sorrow to support with decent firmness the high place which my situation at that period assigned me in the funeral procession; and even now, when thus engaged in the review of his splendid and useful career, I cannot but feel the most affectionate and painful regret, seeking a kind of consolation, with his numerous friends, from his being in a manner still living in the representatives of his family."*

The Banbury peerage case.

Although Erskine at this period of his life never mingled in the political discussions of the House of Lords, a peerage

* This is a well-merited compliment to the genius and amiable qualities of his friend Lord Holland,—alas! no more,—from whom I myself received more personal kindness than from any political leader with whom I have ever been associated.

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case came on in which he took a deep interest, and on which he bestowed immense labour—the claim of Lieutenant Colonel Knollys to the earldom of Banbury.* He has been highly extolled by those who have hitherto written any account of his life for his efforts on this occasion; but, although the zeal and the eloquence which he displayed are much to be admired, I think he took an entirely erroneous view of the subject, trying without any sufficient reason to set at variance legal presumption and physical fact.—William Knollys, the first Earl of Banbury, when an old man, married the Lady Elizabeth Howard, a girl of nineteen, and she had for her lover the young Lord Vaux. While often in the company of her husband she twice became pregnant, but concealed her pregnancy from him, and she bore two sons during his lifetime, but concealed their birth and their existence from him. Very soon after his death she married Lord Vaux, and the boys taking the name of Vaux were long treated as Lord Vaux's children. Shortly before the old peer died King Charles I. prevailed upon the House of Lords to allow him precedence for his life over Earls created before him, "considering how old a man this lord is, *and childless*." His will made no mention of any son, and an inquisition taken after his death, respecting the lands of which he was seized, found that he died without heirs male of his body. But Edward, the elder son, afterwards claiming to be Earl of Banbury, it was found under a commission from the Court of Wards, that he was the son and heir of the late Earl, and having assumed the title, he was killed abroad during his minority. Nicholas, the younger son, then called himself, and was generally called by others, Earl of Banbury. He was allowed to sit under that title in the Convention Parliament, which assembled in 1660, but he was not summoned to the next Parliament. A committee of privileges reported that in the eye of the law he was the son of the late Earl—but still a

* I am in possession of his MSS. connected with this case, which show, in a very striking manner, the industry he could still, when necessary, call into action. These contain full notes of all the arguments at the Bar—an abstract of all the facts of the case—a collection of all the authorities upon legitimacy—his long speech in support of the claim—and his elaborate protest against the decision.

writ was refused to him on the opinion of the Attorney General, and he died without being allowed to take his seat. His son Charles was likewise excluded. He assumed the title however, and being indicted for murder, petitioned the Lords that he might be tried as a Peer, but they decided against him. He then pleaded his peerage in abatement, and the decision of the House of Lords being replied, Holt C. J., to the great wrath of the Peers, with perfect propriety allowed the plea, as the decision of the Peers was not founded on any reference by the Crown. His descendants continued to call themselves Earls of Banbury, but were not summoned to the House of Lords, and did not again take any proceeding to establish their right, till the petition presented by the present claimant. Erskine, being his private friend, and thoroughly convinced that his claim was well-founded in law, delivered a very animated speech in the Committee of Privileges, to which it was referred. "I admit," said he, "that the claimant labours under great disadvantages. The facts, in his case, are extraordinary, and the grave has long since been closed over all the individuals whose evidence could afford him any assistance. His claim is almost as old as the patent of his ancestor, and successive generations have passed away without any recognition of it by this House. Yet time would be the instrument of injustice, if it operated to raise any legal bar to the claimant's right. Questions of peerage are not fettered by the rules of law that prescribe the limitation of actions, and it is one of the brightest privileges of our order, that we transmit to our descendants a title to the honours we have inherited or earned, which is incapable either of alienation or surrender. . . . . The rule relating to the bastardy of children born in wedlock may be reduced to a single point — 'the presumption in favour of the legitimacy of the child must stand, until the contrary be proved by the *impossibility* of the husband being the father, and this impossibility must arise either from his physical inability or from non-access.' It has been urged, that strong improbability is sufficient; but this I confidently deny. We do not sit here to balance improbabilities on such a topic as this. If access

Erskine's speech on legitimacy in defence of the claim.

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can be proved, the inference from it is irresistible,—whatever moral probability there may exist of the adulterer being the father, whatever suspicions may arise from the conduct of the wife, or the situation of the family, — the issue must be legitimate. Such is the law of the land. Women are not shut up here as in the Eastern world, and the presumption of their virtue is inseparable from their liberty. If the presumption were once overthrown, the field would be laid open to unlimited inquiries into the privacy of domestic life; no man's legitimacy would be secure, and the law would be accessory to the perpetration of every species of imposture and iniquity. A fixed rule may give rise to occasional deviations from justice; but these amount to nothing more than the price which every member of the community may be called upon to pay for the advantage of an enlightened code. No laws can be framed sufficiently comprehensive to embrace the infinite varieties of human action, and the labours of the lawgiver must be confined to the development of those principles which constitute the support and security of society. He views man with reference to the general good, and that alone. He legislates for men in general,— not for particular cases. No one can doubt that the interests of society are best consulted by making a question of such frequent occurrence as *legitimacy* to rest on a limited number of distinct facts — easy to be proved, but not to be counterfeited — instead of leaving it to be the result of inference from a series of indefinite circumstances, separately trifling, and only of importance collectively, from the object to which they are applied. Marriage and cohabitation afford us a more sure solution of the question of legitimacy than we could arrive at by any reasoning on the conduct of the husband and wife. — As to the advanced age of the husband in this case, there is no statute of limitations on the powers and faculties of man. Instances of robust longevity might be cited still more extraordinary. Sir Stephen Fox married at the age of seventy-seven, and had four children; the first child was born when the father was seventy-eight; the second and third were twins in the following year, and the fourth was born when the father was

eighty-one. The Earl of Ilchester and Lord Holland can vouch for the accuracy of this statement, and I believe their genealogy has stood hitherto unquestioned. Parr became a father when his first-born son was of a more advanced age than the old Earl of Banbury. Moreover, his Lordship seems to have kept all his faculties both of body and mind in full exercise. Though eighty-four or eighty-five years of age, not only does it appear, from the evidence of one of the witnesses, that he went out hawking up to his death, but the Journals of this House furnish us with the best evidence of his attention to more important matters. Then, my Lords, why is the bounty of Lord Vaux to his step-son to be ascribed to another motive than what belonged to such a relationship? Why is Nicholas to be supposed to have repudiated the title of Banbury, because in his childhood he had been called by the name of Vaux? These are weak arms to encounter a presumption so strong as that which exists in favour of legitimacy. The same rights have descended to the present petitioner, and I trust they will be recognised by your Lordships."

His erroneous opinion properly overruled.

But it is quite clear, both from reason and authority, that although the husband and wife may have had an opportunity of being in the society of each other about the time to which the origin of the child is to be ascribed,—without proof of the *impossibility* of the husband being the father, there may be circumstances to lead to the conclusion that they did not live together as husband and wife, and that the paramour of the wife may be considered the father of the child. In the present case the concealment of the birth of the two boys from the Earl of Banbury, and the treatment of them as adulterous bastards, both by their mother and by Lord Vaux, afforded abundant ground for these inferences.—Lord Eldon, Lord Redesdale, and Lord Ellenborough accordingly gave a strong opinion against the claim. But such an impression was made by the plausible arguments in support of it, that upon a division in the committee it was only negatived by a majority of 21 to 13.* Erskine was in a great rage, and

* It was said that among the twenty-one were four spiritual Peers who had

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drew up a strong protest, which was signed by three royal Dukes and seven other peers,—and, writing about it to a friend, said:—"The Protest gives them every fact and all their arguments, but giving them both without a single voice in Westminster Hall from one end to the other." The decision, however, is in conformity to the Code Napoleon, which, on the birth of a child born in wedlock being concealed from the husband, admits proof that it is the child of an adulterer, and having been followed in several cases since, which have been carried by appeal to the House of Lords, is now universally acquiesced in and considered to be law.*

never attended, and ten lay Peers, who attended only occasionally; while the whole of the thirteen had attended constantly,—being, I presume, staunch partisans.

* See Morris *v.* Davis, Clarke and Finelly's Reports, vol. v. p. 163., where all the authorities are collected.—The Judges all say, that if it be believed that intercourse did take place between the husband and wife, whereby the child by possibility may be the child of the husband, it is *presumptio juris et de jure*,—or an invariable rule of law,—that the child is legitimate; but put the supposable, though not probable case, that the husband and wife are *whites*, that the paramour is a *negro*, and that the child is a *mulatto*. *Quid juris?*

CHAPTER CLXXXVIII.

CONTINUATION OF THE LIFE OF LORD ERSKINE TILL THE CONCLUSION OF THE TRIAL OF QUEEN CAROLINE.

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A. D. 1817. Erskine opposes coercive measures.

THE battle of Waterloo being gained, and Napoleon relegated to St. Helena, — a measure necessary for the repose of the world, — party warfare likewise ceased for a time; but Erskine was at his post when hostilities against the Constitution were renewed, and he opposed with all his ancient vigour the "Seditious Meetings Bill," and the suspension of the "Habeas Corpus Act," denouncing these measures as sure to excite instead of to allay discontent, and as more injurious to the Constitution than any passed in the "Reign of Terror," under Mr. Pitt,— when a foreign war, and apparent danger from the spread of French principles, afforded some pretext for such arbitrary legislation.* In opposing a new "Seditious Meetings Bill," he said, — "If the authors of this bill had the government of the seasons, they would no doubt set about a reformation upon their own system, and the elements of fire, water, and air would no longer have their immemorial liberties, but would be put under such politic restraints as we are now about to lay upon the civil world. To *Fire* they would say, 'You are an excellent servant, most beneficial when under due discipline and control, but most dangerous when left unrestrained. You may, therefore, continue to blaze in our kitchen and in our chambers, but you shall no longer descend from heaven with electric flashes, destroying our persons and property, and striking even the spires of our churches with sacrilegious violence.' To *Water* they would say, 'We are delighted with your smooth face upon our calm transparent lakes, and with your ripplings in our summer streams; but you must no longer come down from the hills in winter torrents, sweeping away our flocks and their

June 2. 1818. Scheme for coercing FIRE, WATER, and AIR

* 35 Parl. Deb. 1213. 1224. 1226.; 36 Ib. 981.

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masters.' To *Air* they would say, 'Be free as air; it is even a proverb, and we will support it; continue, therefore, to be free as air, at least in our improved sense of freedom. But not more than fifty clouds shall in future come together, without an order from seven farmers or graziers; and if you shall presume to blight our fruit trees or destroy our harvests, you shall be driven back to your caverns by a single justice of the peace.'" * He likewise brought in a bill to prevent arrest for libel before indictment found against the libeller. This measure he supported in a most elaborate speech, but it was rejected on the second reading by a large majority.†

1819, 1820. The Six Acts.

In the following stormy session, in which the "Six Acts" were passed—(I hope the last trial of the coercive system for England)—Erskine was active and energetic. He began by supporting Lord Grey's amendment to the address; when he condemned in severe terms "the massacre at Manchester," on the dispersion of Mr. Hunt's meeting there,—and the Secretary of State's letter, approving of the violent conduct of the magistrates and the military, without any previous inquiry.‡

Nov. 28. 1819.

On Lord Lansdowne's motion for a committee to inquire

* 57 Geo. 3. c. 3. † 38 Parl. Deb. 1081.

‡ 41 Parl. Deb. 26. 40. An anecdote which he then told, in the vain hope of inducing Lord Eldon to retract an opinion he had uttered, deserves to be recorded in his own language:—"There shoots across my mind at this moment a striking instance of candour which I have long treasured up in my memory, having a strong interest to remember it, because it was useful to me in the beginning of my professional life. Having been engaged in a cause in which that great Chief Justice had expressed a strong opinion in favour of my client, the jury found a corresponding verdict; but a rule having been obtained to set it aside for the Judge's misdirection, I had to support his opinion in the Court of King's Bench. When I had finished my argument, he said—I fear with more indulgence than truth—'This case has been remarkably well argued; so well, indeed, that whilst the learned counsel was defending my direction, I began to think I had been in the right, whereas I never was more mistaken in my life. I totally misunderstood the case. and misdirected the jury; so there must be a new trial, and without costs.' Did this lower Lord Mansfield? So far from it, that, having persuaded myself his first opinion was the best, I could not help saying at the time, that if I had not been convinced of his integrity, I should have thought he was practising a fraud to advance his reputation. It was indeed a justice to truth, which weak men are afraid of rendering, and therefore it is so seldom rendered."—I have, indeed, myself often been surprised at the pusillanimous anxiety of Judges in *Banc* to support their rulings at *Nisi Prius*. Very different was the conduct of a Judge in recent times, who, after all his brethren on the bench had pronounced judgment in his favour, said, "For the reasons given by my Lord and the rest of the Court, I think that I was entirely wrong, and that there ought to be a new trial!"

into the state of the country, Erskine said, with much feeling: — "My Lords, I am now an old man, and have been nearly forty years in Parliament; yet I declare solemnly that I never felt more unqualified regret for any proceeding in it than the rejection of the amendment proposed by my noble friend, and so eloquently pressed upon our attention on the first day of the session. If your Lordships had fortunately adopted it, you could have had nothing farther to consider on this painful subject, and would have escaped the second error of rejecting the proposition of the noble marquess to-night, which I cannot but painfully foresee. You would then have had an unanimous Parliament reprobating all seditious combinations, calling upon both magistrates and people by the combined authorities of the state, to support the Constitution, and to maintain public order and tranquillity. The amendment asked nothing more than that the people should not be condemned unheard. I have had many more opportunities of knowing the sentiments and feelings of those who are classed as seditious subjects than most of your Lordships can have had, and it is my unalterable belief that a system of alarm, supported by mysterious green bags and the array of special commissions, followed as they have been, and will be, by convictions sufficiently numerous to inspire terror — not sufficiently numerous to enforce subjugation — only exasperate evils, the unfortunate existence of which we all deplore. The present discontent may be silenced by severity, but it will be a dangerous silence." "As to the *Spenceans*," he said, "they cannot be gravely considered objects of criminal justice. Instead of the warrants of magistrates, the certificates of apothecaries may secure their persons if they become dangerous. What other prison, indeed, but a madhouse can be opened to receive persons so completely insane as to entertain an expectation that in such a country as England they can bring its whole surface and property into general division and distribution. By an ordinary display of spirit and resolution insurrection may be repressed, without violating the law or the Constitution. In the riots of 1780 when the mob were preparing to attack the house of Lord

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Mansfield, I offered to defend it with a small military force; but this offer was unluckily rejected; and afterwards, being in the Temple when the rioters were preparing to force the gate and had fired several times, I went forward to the gate, opened it, and showed them a field-piece which I was prepared to discharge, in case the attack was persisted in; they were daunted, fell back, and dispersed." After this somewhat vain-glorious narrative of his martial prowess (for which I find no other authority), he entered at great length into the law respecting public meetings, and having commented upon the late conduct of the Government on this subject, he observed, "The threatened severe measures cannot restore confidence, nor willing obedience to Government. *Confide yourselves in the people,* and all murmurs and discontents will be at an end. For my own part, while I have life and strength to raise my voice, I will continue to protest against them *here and every where.* I will not repeat with the same oath what I swore in the House of Commons when similar restrictions were in agitation *, but I will say firmly, that I was born a freeman, and I will not die a slave." † Dissatisfied with himself, he thus apologised for what he considered his want of energy in Parliament as compared with his forensic efforts. "I despair altogether of making any impression by any thing I can say — a feeling which disqualifies me from speaking as I ought. I have been accustomed during the greatest part of my life to be animated by the hope and expectation that I might not be speaking in vain, — without which there can be no spirit in discourse. I have often heard it said, and I believe it to be true, that even the most eloquent man living (how then must I be disabled?) and however deeply impressed with his subject, could scarcely find utterance, if he were to be standing up alone, and speaking only against a dead wall."

Erskine's solution of his failure in Parliament.

As the several bills came forward, he strenuously, though

* Perhaps he recollected the lines in the "Pursuits of Literature," in which the author of that satire, among things impossible, ("Sooner, &c.") says,

"Or Erskine cease from impotent grimace,
And his appeals to God,— his prime disgrace."

† 41 Parl. Deb. 441

ineffectually, opposed them in every stage *; but I do not dwell upon their odious enactments, as in better times they have all been repealed or allowed to expire, and there seems no danger of their ever again being proposed, as, with a much greater disposition to insurrection among the lower orders than then existed, both the great parties in the state have wisely and successfully trusted to a vigorous and judicious use of the ordinary powers of the law. †

Jan. 29. 1820. Death of George III.

While these discussions were pending, George III. expired. Although the government had still been carried on in his name, he had long ceased to control or to be conscious of public events, and for many years as if already sleeping in the grave —

> ——— " Nor steel, nor poison,
> Malice domestic, foreign levy, nothing
> Could touch him further."

George IV. and Queen Caroline.

The Prince of Wales, under the title of REGENT, had exercised without restriction all the prerogatives of the Crown, and this event merely changed his title to that of George IV., without at all affecting his political position.

But the lady to whom he had given his hand, instead of an outcast, wandering in foreign countries, sometimes under a feigned name, with hardly pecuniary supplies to defray the expenses of her slender suite, was suddenly Queen of England, entitled by law to share the throne, and to enjoy many powers and privileges suitable to her exalted rank. The new Sovereign was now to pay a dreadful penalty for the manner in which he had insulted and abandoned her. From the levity of her conduct, after the "Letter of Licence" he had given her,— whether she had actually broken her marriage vow or not, —he could not receive her back as his wife without dishonour, and he could take no proceedings to obtain a divorce from her without exciting the sympathies of all mankind in her favour, and exposing his conduct towards her in

* 41 Parl. Deb. 682. 695. 706. 966. 981. 1304. 1307. 1310. 1374.

† I allude to the Whig Government in 1839–40, and to the Conservative in 1841–42. I must again express my joy at being at liberty to reprobate the old system of coercion, without being liable even to the suspicion of trying to throw odium on political opponents.

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a manner which must not only be fatal to his own reputation, but even dangerous to the monarchy. With prudence, an arrangement might perhaps have been made by which she might have remained quietly abroad, her title and an adequate establishment being conceded to her; but he still continued under the rule of his vindictive passions, and to his great misfortune, and to the unspeakable prejudice of the nation, his Ministers had not the firmness to resist the mad measures which he suggested against her. Instead of entering into negotiation with her, the first rash proceeding of the new reign was illegally to exclude her name from the Liturgy, as if already convicted of some great crime, although the meanest subject in the realm was entitled to the presumption of innocence till proved to be guilty. In spite of the threats held out to her, she boldly came to this country to claim her rights,—and in an evil hour Lord Liverpool and Lord Eldon yielded to the desire of her husband, that she should be brought to a public trial for adultery. This did not, as in the time of Henry VIII., take the shape of an indictment for high treason, as not only were her alleged offences committed beyond the seas, but it was not supposed that, under the circumstances, even if she had been convicted, the public would have endured to see her share the fate of Anne Boleyn or Katherine Howard. All that was asked was, that, being declared guilty of adultery, her marriage with his Majesty should be dissolved, and she should be degraded from her state and dignity as Queen. Little did the authors of this measure calculate upon her spirit, or upon the love of justice which ever actuates the inhabitants of Britain.

The Queen comes to England.

Prosecution against her.

Erskine's independent conduct on this occasion.

In the proceedings which followed, Erskine took a very prominent part, and as it may be considered the close of his public life, I particularly rejoice to think that it was altogether worthy of him. Closely connected as he had been for so many years with the royal prosecutor, who regarded with indignation and abhorrence all opposition to his will on this subject, he exercised an impartial and independent judgment on the merits of the case, and gave his opinion and his vote on every question which arose in it, as if he had been

sitting in an ordinary criminal court to decide upon his oath between humble individuals of whose names he had never before heard.

June, 1820. He moves that the Queen should be furnished with a list of the witnesses against her.

Differing with most of the members of his party, he supported the preliminary motion for submitting to a secret committee the contents of the "green bag" alleged to be sufficient to establish the Queen's guilt, as he thought the King was entitled to a hearing, and this step was analogous to the finding of an indictment by a grand jury.* But when, after the report of the committee, the "Bill of Pains and Penalties" had been presented, and a day was fixed for the second reading, which was to be the commencement of the open trial, he moved that before that day arrived the Queen should be furnished with a list of the witnesses to be produced against her. "This proceeding," said he, "is so rare, or rather so anomalous, that no precedent can be found exactly to apply to it; but in trying to hold the scales of justice equal between the accuser and accused, we may be guided by the spirit of the excellent statute of William III. for the protection of persons charged with high treason — whereby, before the Court is opened, the prisoner is to be furnished with a list of the witnesses, as well as a copy of the indictment. What is the principle of this admirable enactment, conferring a privilege which in ordinary cases is denied? — Because the prisoner has not to contend with an equal accuser — and therefore he is covered all over with the armour of the law. Is not the present case of the same description? I do not mean to speak invidiously, but only to point out the situation of the illustrious accused. She has to contend against the Crown and its Ministers, and against all the powers and influences which they possess. In most cases of high treason, the Crown and its Ministers have no personal wrongs to stimulate resentment, nor any other interest in conviction than a general interest in the safety of the state: but here the King himself is the individual charged to be personally wronged, and he may be said to be personally the accuser; the illustrious accused is charged di-

* Hansard, new series, i. 992. 1116. 1211.

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rectly in the bill with 'a violation of the duty she owed to his Majesty,' — not as his subject, — but in violation of her duty as his wife. This gives an increased force to the great fountain of influence against which she has to contend. Ministers have staked their credit — perhaps their existence — on the success of the course they have recommended or assented to. Let it not, however, be thought that I am charging the Sovereign with making unworthy exertions in the prosecution even of a personal wrong, or his Ministers with a design corruptly to concur in them; but the general presumption of law is entirely founded upon the probable abuse of power in trials for offences against the state, and it is impossible to resist or evade that presumption by arguing against any probable injustice in any particular case, without overthrowing the principle upon which the very law you yourselves have enacted, and have so long abided by, can alone rest for its support. I am well aware that no rules can bind us; but how shall we escape from reproach if we refuse to abide by those rules which we have made binding upon others, the reason for their obligation applying equally, or more forcibly, to ourselves? — The generality of the charge also in the preamble of this bill adds most imperiously to the demand of the statute of King William. It is in effect a criminal charge or it is nothing; yet it in no way resembles any other criminal charge ever exhibited, here or elsewhere, before any court of justice. Above all, it has none of the precision which is the very characteristic of English law. Her Majesty is not charged with any specific act of adultery, but with "an adulterous intercourse" — and this not at any specified time or times, but during her whole absence from England, for six years together — which exposes her to criminating evidence, not only as to acts, but general deportment on every one day or hour of the day throughout all that time; — and this also not confined to any place or places, though it was known she had been travelling in countries remotely distant from each other. I do not mention this as an arraignment of the framers of the bill; it is enough for my view of the subject, that

this unparalleled generality of accusation creates an unparalleled difficulty of defence, and renders a list of the witnesses indispensably necessary for the ends of justice. As the adulterous intercourse is alleged to have taken place with one whose station required his constant attendance on her person, through the many countries she visited, it is obviously impossible to anticipate, within whole years, or within thousands of miles, the assaults to be made upon her acts, or even upon her general deportment, which the bill calls upon her to defend. Another analogy between this Bill of Pains and Penalties and a trial for high treason arises from the punishment to be inflicted on conviction. What, my Lords, is death, which in a moment ends us, to the lingering and degrading suffering, which the accused may, under our judgment, be sentenced to endure? Born a Princess, of the same illustrious house as the King her consort, and now raised to wear the imperial crown of the greatest nation that ever flourished on the earth, — she may be suddenly cast down to shame and sorrow — and not only excluded from the society of her exalted kindred, but for ever deprived of the esteem and affection of the whole female world. For my own part, my Lords, this appears to me the heaviest and most intolerable punishment which any human tribunal can inflict. These are my sentiments, and no person surely can reasonably accuse or suspect me of any leaning beyond that of justice to the cause of the illustrious accused: my leanings, if I could suffer their intrusion, would rather draw me to the opposite side. All your Lordships must know that I have spent a great part of my life in the service of the present King. I remember indeed so well, and feel so strongly, the warm interest taken by his Majesty in my prosperity and happiness, in some of the most important periods of my progress, that I could not be unjust to him. The habits of my professional life are, I hope, a useful shield against every bias whatsoever. I was bred, in my early youth, in two professions, the characteristic of which is honour. But after the experience of very many years, I can say with truth, that they cannot stand higher for honour than the profession of the law. Amidst unexampled

temptations, which, through human frailty, have produced their victims, the great bulk of the members of it are sound; and the cause is obvious — there is something so beautiful and exalted in the faithful administration of justice, and departure from it is so odious and disgusting, that a perpetual monitor is raised up in the mind against the accesses of corruption. The same protection ought also to apply to us, the highest of the Judges. When this House shall have deliberately and solemnly decided that the restraints imposed by common law and by statute, to shut out all the approaches to mistake, influence, or corruption, may be set at nought, will not the reserve and caution of all inferior judicatures be impaired?—will not the consequence be the disregard, perhaps even the repeal, of those admirable and now ancient rules by which, though we have enacted them to govern others, we ourselves have refused to be governed? Believe me, my Lords, I feel upon this part of the subject, so inseparably connected with the illustration of our country, much more than by any words I can express. It may be superstition, perhaps, but I cannot alter the nature and character of my understanding, which, as long as I can look back, has dictated to me, as a comforting truth, that the DIVINE PROVIDENCE singles out particular nations, and perhaps even individual men, to carry on the slow and mysterious system of the world. This island, although placed on the very margin of civilisation, has been its example and its protector,—spreading the blessings of a pure religion and of equal laws to the remotest ends of the earth. My impression, my Lords, has always been, that such an unparalleled dominion is but a more exalted trust, and that if we fall off from the character which bestowed it, and which fitted us for its fulfilment, we shall be deservedly treated like sentinels who desert, or who sleep upon, their posts. Let us stand by the principles of the Revolution, which so happily made us what we are, and by adhering to which we shall remain what we ought to be. My Lords, I have not made these observations from any desire to disappoint or obstruct the course we are engaged in. When the Court assembles, I will do my duty as if all the angels

of heaven were taking notes of whatever passes through my mind on the subject." But upon a division there were for the motion only 28,—against it 78.*

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July 24. Refusal to furnish the Queen with a specification of the criminal acts charged against her.

A few days after, Erskine presented a petition from the Queen, lamenting that the House of Lords had deemed it proper to refuse her a list of the witnesses, and praying for "a specification of the place or places in which the criminal acts charged upon her are alleged to have been committed—without which she could only adequately prepare for her defence by bringing from every place she had visited during the last six years every person who had had the means of observing any part of her conduct." Although he enforced a motion to this effect by another able speech,—on this occasion only eleven Peers voted along with him †, — so inauspiciously did the defence of Queen Caroline begin. But these flagrant outrages shocked public feeling, and greatly contributed to rouse that general sympathy in her favour which finally proved irresistible. ‡

Aug 17.

When the trial actually began the eyes of mankind were chiefly turned on Mr. Brougham and Mr. Denman, whose heroic exertions in favour of their oppressed if not innocent client, shed fresh lustre on English forensic eloquence. Erskine was still distinguished in striving for impartial justice between the parties, by watching the procedure and enforcing the rules of evidence.

Anecdote of a witness who refused to kiss the book.

A discussion arising respecting the mode of swearing the witnesses, he related the following anecdote, to the great amusement of the House: — "My Lords, when I was counsel in a cause tried in the Court of King's Bench, an important witness called against me, without describing himself to be of any particular sect, so as to be entitled to indulgence, stated, that from certain ideas in his own mind he could not swear according to the usual form of the oath; that he would *hold up his hand* and would swear, but that he would not kiss the book. I have no difficulty in saying that

* Hansard, ii. 314. 428. 470. 472.

† Ib. 574. 586.

‡ In Scotland a list of the witnesses is given in every criminal case; and in England, in an action for *crim. con.*, a specification as to times and places is ordered as a matter of course.

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I wished very much to get rid of that witness; and I asked what was his reason for refusing to be sworn in the usual form? He gave a reason, which seemed to me a very absurd one, '*Because it is written in the "Revelations," that the angel standing on the sea* HELD UP HIS HAND.' I said, '*This does not apply to your case; for, in the first place, you are no angel; secondly, you cannot tell how the angel would have sworn if he had stood on dry ground, as you do.*' Lord Kenyon sent into the Common Pleas, to consult Lord Chief Justice Eyre, who expressed himself of opinion, that although the witness was not of any particular sect, yet if he stated (whether his reason was a good or a bad one) that there was a particular mode of swearing most consistent with his feelings, of the obligation of an oath, this mode ought to be adopted. So the witness was sworn in his own fashion. Whether he spoke the truth or not, unfortunately for my client, the witness was believed by the jury, and I felt that the Judge was right, so that there was no ground for moving to set aside the verdict."*

Erskine successfully resists the adjournment of the trial to enable more witnesses for the prosecution to arrive.

A motion being made by the Attorney General to adjourn the trial, that additional witnesses for the prosecution might have time to arrive, Erskine strenuously resisted it, saying that "no such instance has ever been heard of in any Court of Justice; to grant such an application would be subversive of all those principles upon which the security and the life of every individual in the kingdom depend. I can believe that your Lordships will agree to it; but if you do, I shall feel it my duty to record my solemn protest against such a decision. I have attended, with great inconvenience to myself at my advanced age, humbly to assist your Lordships on points of law or evidence, with the result of my long experience; but if such an application as the present be granted, experience, reasoning, and precedent are no longer of any avail in this House; and it is time for me to retire." The Attorney General would still have had a large majority in his favour, if he had chosen to persist in his application; but in consideration of the feeling which was rising out of doors, he prudently withdrew it.†

* 2 Hansard, 911. † Ib. 1326.

He is properly defeated on a motion to give an irregular advantage to the leading counsel for the Queen.

The case for the Crown being closed, and an adjournment of three weeks being to take place, to enable her Majesty to prepare for her defence, Erskine made a very anomalous motion, which could only be excused by the peculiarity of the case, " That Mr. Brougham should then be allowed to comment on the King's witnesses, without being required to open the evidence he meant himself to adduce till the House met again." He urged with some effect the disadvantage under which the Queen had laboured for want of a list of the witnesses, and a specification, with time and place, of the charges against her; and he pointed out the unfairness of allowing the evidence for the King, with the opening and summing up of his counsel, to remain so long in the minds of their Lordships and of the public, without any answer. But precedent and convenience were on the other side, and without any obloquy being on this occasion incurred by the House, the motion was properly negatived by a majority of 170 to 49.*

Nov. 2. Erskine's speech on the second reading.

When all the evidence on both sides had been given, and the speeches at the bar were at last concluded, the important debate on the second reading of the bill was opened by the Lord Chancellor; and Erskine, rising to answer him, said: " I am now drawing near to the close of a long life, and I must end it as I began it. If you strike out of it, my Lords, some efforts to secure the sacred privilege of impartial trial to the people of this country, and by example to spread it throughout the world, what would be left to me? What else seated me here? What else would there be to distinguish me from the most useless and insignificant among mankind? Nothing — just nothing! — And shall I then consent to this suicide — this worse than suicide of the body, this destruction of what alone can remain to me after death — the good-will of my countrymen? — I DARE NOT DO THAT. — Proceedings of this kind, my Lords, have never been countenanced but in the worst times — and have afterwards not only been reversed, but stigmatised. You were justly reminded at the bar, that they were ordered by succeeding Parliaments to be taken off the file and burned, — ' to the

* 3 Hansard, 40.

end that the same might no longer be visible in after ages!' But upon that I desire to repeat a sentiment which I remember to have expressed in struggling against arbitrary prosecutions in former times — that, instead of directing these records to be burned, they ought rather to have been blazoned in our Parliaments, and in all our tribunals, that, like the characters which appearing on the wall were deciphered by the prophet of God to the Eastern tyrant, they might enlarge and blacken in our sight to terrify us from acts of injustice."

While speaking, he is taken dangerously ill.

He was then proceeding to analyse the evidence, when, according to the *Parliamentary History*, "His voice suddenly ceased. The pause was not particularly noticed at first, as it appeared as if his Lordship were looking over the minutes placed on the table before him; but after some time had elapsed without his resuming his speech, some of the peers became alarmed, and rose from their seats to gather round him. The anxiety of the House was now aroused as he fell forward senseless on the table. There were cries of '*Open the windows!*' and, '*Some water!*' The Lord Chancellor and the Earl of Liverpool evinced the greatest concern, and proceeded immediately to Lord Erskine's assistance — along with Earls Grey and Carnarvon, Lord Holland, and Mr. Baron Garrow; — but his speech and colour were gone. They were obliged to carry him into an adjoining room, where medical aid was procured — and the House adjourned."*

He recovers.

It was generally thought that his end was to resemble that of the great Earl of Chatham, and it certainly would have been well for his reputation if he had now expired in the discharge of his public duty; but it was found he was suffering a violent temporary cramp in the stomach, which was completely relieved soon after he had been conveyed home. When intelligence of his safety had been received, the House of Lords reassembled, and Lord Lauderdale continued the debate, contending, to the grief of his old political associates, that the proceeding against the Queen was laudable, and that her guilt was established by the witnesses she herself had called.

* Hansard, 1469.

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The following morning Erskine was so far recovered as to be able to attend in his place; but he did not then attempt to continue his argument, the day being exhausted by two very able speeches, on opposite sides, from Lord Grey and Lord Liverpool. But again appearing at the next sitting of the House, he resumed his discourse, and said,—"It is no longer my intention to minutely examine the evidence which I was proceeding to do when attacked by sudden indisposition. I experienced kindness from your Lordships, for which I can never be sufficiently grateful. The admirable speech of my noble friend (Earl Grey), which, at every risk to my health, I yesterday attended to hear, renders such a course unnecessary. The attempt would only unsettle your minds from a conviction which must be impressed upon them by the perspicuity with which he laid the facts before you, and the cogency with which he drew the just inferences from them. I now offer myself to your Lordships rather as a kind of authority from long professional habits, than as a debater — omitting, however, none of the facts supposed to be established by the prosecutor — submitting to you, at the same time, the principles of law by which their truth or falsehood ought to be examined, and the just consequences which follow from such of them as are true. If I were a Judge trying an action for adultery under similar circumstances, I think I should thus begin my summing up: 'Gentlemen of the Jury, I am under no small embarrassment in stating my opinion on the case before you, after having seen your box opened, and the plaintiff in the cause admitted to assist you in the verdict you are to pronounce: but on this I wish to be silent, as it is a matter to which we must now submit, and which is expected to be a valuable improvement of the Constitution. All things arrive but by degrees at perfection, and the prejudices of our ancestors regarding the trial by jury, and the securities provided by them for its independence, are likely to be superseded by this grand discovery of the present age. The defendant certainly has laid before you the most positive evidence of the foulest practices to corrupt the sources of justice.'—My Lords, I find I cannot

He resumes his speech.

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go on with a supposititious case, nor continue to address you as a jury; amidst such disgusting instances of fraud and perjury I cannot preserve the coolness which becomes a Judge in a court of law, and I must speak with the freedom which may, in such a case, be not improperly exercised by a member of this House. A dark cloud hangs over the very beginning of the prosecution; and when we find the accusation to have been hatched in secret, and to have been supported by all the power and influence of foreign governments, — when we see that some of the witnesses have been thrust forward by force, and others by the same force have been kept back — and that the foulest subornation has been detected, — what security could we have had for the truth of any part of the evidence, even if it had not been impeached by the palpable perjuries which have been exposed? If her Majesty be really guilty, and the prosecution is therefore a just one, no false testimony could exist; false testimony is never found where a prosecution could be supported by truth, and one detected falsehood takes away from the credulity of testimony brought forward by the same party, although it stands without direct contradiction." Having commented at considerable length on all the principal witnesses, he said: "If I were in the Queen's situation, and I were convicted of adultery by your Lordships on such evidence as this, I would cast your decision in your face, and appeal to the other House of Parliament — to the representatives of the people. The House of Commons cannot pass the Bill against their own conviction, and against the national *nolle prosequi* which resounds from every quarter of the island. — Of the legal proof of adultery I cannot be ignorant, having conducted every important case of that kind for thirty years, not only in Westminster Hall, but likewise on the circuits; and I am sure, my Lords, it is impossible to infer that the opinion I have formed on this unfortunate subject has arisen from prejudice or from partial inclination. To the King, who cannot be an indifferent spectator of this proceeding, I have many, many obligations, from the warm interest formerly taken by his Majesty in my advancement

and credit, and from my belief that I am still held by him in the same personal regard — though political changes have removed me to a greater distance from his person. If his Majesty should ever be exposed to any injurious treatment, I should be ready to protect him at the peril of my life. I would contribute to his happiness by every sacrifice but that of my duty. My principles I never have deserted, and never will desert." He is said to have sat down amid loud cheers. The second reading was carried, — but only by a majority of 28.*

The Bill was farther greatly damaged in the committee from an attack of Erskine, and still more from the diversity of opinion among the bishops, with respect to the canonical doctrine of divorce.

Nov. 10. 1820. Debate on the third reading

During the short debate on the third reading every one perceived that the measure was "*doomed;*" and Erskine declared, that "he should content himself with saying, notwithstanding his great respect for the learning of his noble friend on the woolsack, he continued of the opinion he had formerly given on the effect of the evidence, — asserting that, "if it were the last word he had to utter in this world, he should pronounce the evidence to be wholly insufficient to support the charge; — and he was certain that it would not be held sufficient in any Court in which justice was duly administered." The third reading was carried, but only by a majority of 9.†

The bill withdrawn.

Lord Liverpool. "I cannot be ignorant of the state of the public feeling, and this House has determined that the Bill shall be read a third time by a majority of not more than nine votes. Had the third reading been carried by as considerable a number of Peers as the second, I and my colleagues would have felt it our duty to persevere, and to send the Bill down to the other branch of the Legislature. In the present state of the country, however, and with the difference of sentiment among your Lordships so nearly balanced, we have come to the resolution not to proceed farther with it. I move, therefore, that the farther consideration of the Bill be adjourned to this day six months."

* 3 Hansard, 95 to 123. 1698. † Ib. 99 to 108. 1744.

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Erskine's last speech in Parliament.

Lord Erskine. "I see the fate of this odious measure consummated, and I heartily rejoice at the event. My Lords, I am an old man, and my life, whether it has been for good or for evil, has been passed under the sacred rule of the law. In this moment I feel my strength renovated by that rule being restored. The accursed charge wherewithal we had been menaced has passed over our heads. There is an end of that horrid and portentous excrescence of a new law — retrospective, oppressive, and iniquitous. Our Constitution is once more safe. My heart is too full of the escape we have just experienced to let me do more than try to express my sense of the blessings which we have regained; — but I cannot praise them adequately myself, and I therefore prefer the language of one of the most eloquent writers of any age — Hooker — in his great work on Ecclesiastical Polity: 'Of Law, there can be no less acknowledged, than that her seat is the bosom of God; her voice, the harmony of the world: all things in heaven and in earth do her homage, — the very least as feeling her care, and the greatest as not exempted from her power; — both angels and men, and creatures of what condition soever, — though each in different sort and manner, yet all with uniform concert, — admiring her as the mother of their peace and joy.' "* This proved to be Erskine's last speech in the House of Lords; and it certainly was a glorious termination of his parliamentary career.

* 3 Hansard, 1747

CHAPTER CLXXXIX.

CONTINUATION OF THE LIFE OF LORD ERSKINE TILL HIS LAST VISIT TO SCOTLAND.

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Erskine's popularity revived.

AFTER the Queen's trial Erskine survived nearly three years; but he very rarely appeared in his place in Parliament, and he never again addressed the Peers, except once or twice, in a tone of conversation, upon a point of order. However, his chivalrous defence of Caroline of Brunswick, in the midst of strong temptations to side with her prosecutors, revived his ancient popularity; and, without any fresh exertion, he continued till his death the idol of the multitude, almost as much as he had been when exposing the danger to liberty from "constructive treason" in the defence of Hardy and Horne Tooke. He was loudly cheered as often as he appeared in public; addresses, and gold boxes containing grants of the freedom of corporations, poured in upon him from all parts of the country, and prints and busts of him ornamented every workshop and almost every cottage.

He is invited to a public dinner at Edinburgh.

The Scotch who, notwithstanding their alleged nationality, have always been cautiously slow in doing honour to their eminent men while alive, — although they were proud of the greatest advocate that had ever practised at the English bar, had never, hitherto, shown him any public mark of distinction — piqued, perhaps, by his seeming neglect of them, — for he had not once visited his native land since he first left it in the uniform of a midshipman, more than half a century ago. There was now, however, a general desire in all ranks beyond the Tweed to see among them, and publicly to honour the man who had done so much to raise the national fame, and to remove the prejudice that they were time-serving politicians — ever ready, for the sake of a job, to support and to praise the minister of the day. Accordingly, he was invited to a public

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dinner at Edinburgh, and he at once accepted the invitation,— not only from gratified vanity, but from a desire to revisit the scenes of his childhood, and above all, from a curiosity to cross by a bridge the *loch* or lake, which had been the northern boundary of AULD REEKIE, and to admire beyond it the splendid New Town of Edinburgh, where he had been accustomed to shoot wild ducks and snipes.

He arrives at Edinburgh.

On his arrival in the Scottish metropolis he eagerly flew to his old haunts, particularly the "flat" in the lofty house inhabited by his father and mother,—the High School where he had smarted under the *tawse*,— and the close in which he believed he had conversed with the ghost of the old family butler. It is said that he was affected by deep melancholy when he found that a second generation of men had nearly passed away since he had run about there, a thoughtless, barelegged, curly-pated stripling, and when he reflected that he must himself soon be spoken of among those who *had been.* Confessing himself to be *laudator temporis acti*, he would not allow that many of the changes which he saw were improvements, and recollecting the lustre shed upon their country by Hume, Robertson, and Adam Smith, he questioned whether Scotland prospered in literature as much as in material wealth. But after he had passed a few days in the society of FRANCIS JEFFREY, all these moody contemplations were banished from his mind, and he admitted that for valuable knowledge, for intellectual prowess, for refined taste, and for gentle manners she could still show a man equal to the sons of whom she had been most proud in former days.

Unfortunately, party spirit was dreadfully embittered by the recent trial of the Queen, and now raged in Edinburgh with unexampled fury. For this reason the Tories considered themselves bound to keep aloof from him who had so crossed the wishes of the King, and who was now so obnoxious at Court. Walter Scott, whose benevolent disposition is to be admired not less than his genius, refused to meet him, and did every thing in his power to disparage him.

The dinner.

Nevertheless, the dinner went off with éclat—Jeffrey, Cockburn, Cranstoun, Moncrieff, John Murray, Cunning-

hame, and the other leading Scotch Whigs assisting to do honour to their illustrious guest. They drank the health of "Plain Thomas Erskine," thinking that such a designation would be more grateful to his feelings than a pompous enumeration of all the titles bestowed upon him and all the offices he had ever filled. His forensic triumphs were duly celebrated, and he was seen to shed tears at allusions to the glories of former days.

His speech after dinner.

His own speech was distinguished by good feeling and good taste. After a few introductory observations, he thus burst forth: —

> "Breathes there a man with soul so dead
> Who never to himself has said,
> 'This is my own, my native land;'
> Whose heart has ne'er within him burn'd
> When home his footsteps he has turn'd
> From wandering on a foreign strand?

"The accomplished author well knew that there was no such Scotsman: no, I verily believe there is no such man, — the great Author of our nature having implanted in us all an instinctive love of our country. It is this which makes the heart throb and vibrate when the eye recalls even the inanimate scenes of our earliest youth. A waste covered with heath or broom — varied, perhaps, by no higher vegetation than a few stunted trees half dead with age, which are yet remembered—will more affect the imagination of every human being, and will fill him with a far higher delight than the most splendid scenery which nature assisted by art ever produced. It is on this account that when I shall visit St. Andrew's, the sequestered place to which my excellent parents retired for so many years, to perform the most sacred duty to their children, I shall feel more than I can express. The lifeless unadorned street in which a traveller would read his book as he drove through it, will electrify me at every step. I shall gaze upon the old plastered church wall (if it be yet standing) where I used to toil at fives when I was a boy with more pleasure than St. Peter's at Rome could bestow.* Gentlemen, these sentiments are quite universal, and

* As a St. Andrew's man, I feel rather hurt at the slighting manner in which he speaks of this seat of learning. The Presbyterian Church, against which

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they illustrate the Divine Providence in the economy of the world. Some regions are covered with never-fading fruits and flowers, whilst in others vegetation sickens and human life almost goes out: but the instinctive love of country gives, in the estimation of the native, equal lustre and enjoyment to them all. Without this attachment, indeed, there would be no such thing as a people, and we should be still, as in the earliest times, scattered tribes, roaming about in search of spots where acorns are most abundant, or wild animals may be most easily snared. Scotland has ever been proverbially and fondly pre-eminent for this useful, this virtuous attachment; and however we may be driven to seek our fortunes in the most distant countries, we are still eager to return to our own." After dwelling at considerable length on the glory, martial and literary, which the Scotch had acquired by their love of country, he described his astonishment when he first saw the NEW TOWN "not one stone of which stood upon another, when more than half a century ago he left Old Edinburgh, which gave him birth." He then rather in a discursive manner touched on parliamentary reform, and other topics, and concluded by saying, "I shall look back with delight on this day during the remainder of my life — a period which cannot now be much prolonged — and I hope that all who shall ever be descended from me will hold it in perpetual remembrance.*

Mrs. Grant of Laggan's account of Erskine at Edinburgh.

Of this dinner we have the following prejudiced account from Mrs. Grant of Laggan, who, though now become an Edinburgh Tory, I must admit when she wrote her "Letters from the Mountains," displayed as much talent in describing Highland scenery and Highland manners as Madame de Sevigné, in painting the characters and narrating the in-

he played at fives, is not much to be commended for exterior beauty; but the chapel of St. Salvator's College is a fine specimen of Gothic architecture; and the cathedral in ruins gives striking though melancholy evidence of the ancient splendour of the metropolitan see of Scotland.

* An Edinburgh correspondent of mine, who was present at this dinner, says: "His Lordship's speech rather caused a feeling of disappointment, — it not having the brilliancy we looked for. I must grant, however, that this may have arisen from our want of good taste as to what a dinner speech should be. It was a light, rambling, and jocular speech — whereas our stock speakers at that time delivered on such occasions regular and formal spoken *Essays*."

trigues of the Court of Louis XIV.: "The party have been paying great homage to Lord Erskine, and talking of his return to Scotland after fifty-one years' residence, as if a comet had re-appeared. I was asked to meet him last Saturday night, and saw him surrounded by all his satellites. He is a shattered wreck of a man, decked with a diamond star. This decoration he wore, I was told, as a Knight of the Thistle. I always thought of him with the deep straw bonnet which he wore on his Gretna Green expedition. * On Monday the great dinner was given to the Ex-Chancellor. Several great persons were expected, but none of them came. † I observe that these despisers of rank are wonderfully vain of getting a title to grace their meetings."

He visits the Court of Justiciary.

The illustrious stranger next visited the Court of Justiciary, and appeared there with the star of the order of the Thistle blazing on his breast. The question to be considered was one which had occupied his thoughts much when he was Lord Chancellor—how far Judges should interpose to punish in a summary manner printed comments on their own proceedings? A schoolmaster at Glasgow had published in a newspaper a letter disapproving rather freely of a judgment of their Lordships, and the Lord Advocate complained of this as a contempt of Court, for which the culprit ought to be immediately committed to the *Tolbooth*. Mr. Cockburn, the defendant's Counsel, argued that he had not exceeded the bounds of legitimate discussion, and that, at any rate, the case ought to be submitted to the determination of a jury, in the ordinary course of law. The Court, however, asserted its jurisdiction, and passed sentence of imprisonment. Lord Erskine decorously concealed all expression of opinion while he remained on the Bench, but in private lamented that in Scotland "trial by jury" should be thus superseded. ‡

He is applauded at the theatre.

He afterwards went to the theatre, to see the representation of "The Heart of Midlothian." It is a curious fact,

* I know nothing of the story here alluded to.

† I suppose she means some Tory Peers. All the truly great men in Edinburgh, except Walter Scott, were present at the dinner.

‡ His own conduct on such occasions had not been quite uniform and consistent. See *antè*, p. 568.

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that Walter Scott, who had studiously kept aloof from his society, was present on this occasion. "The Edinburgh Evening Courant," coupling them together, says, "they were loudly cheered on their entrance and departure." It would have been highly becoming if they had been seen arm in arm, and it had been impossible to distinguish which of them had the greater share of applause; but I have learned, from a private source, that entering and departing at separate times, they sat on opposite sides of the house; and that the Ex-Chancellor being the "great lion," much more attention was paid to him. — This seems to have sunk very deep into the breast of Walter, who, years after, offered an ingenious solution of it to soothe his own feelings. In his Diary, after alluding to the old woman at Carlisle, in the year 1745, who, when the Highlanders had taken that city by assault, being afraid of violence to her person, and surprised that none was offered, called out, "when is the ravishing to begin?" he considers how he should act if any public mark of respect should be shown to him at Paris, and thus proceeds: — "I am sure I shall neither hide myself to avoid applause, which probably no one will think of conferring, nor have the meanness to do any thing which can indicate a desire of ravishment. I have seen, when the late Lord Erskine entered the Edinburgh theatre, papers distributed in the boxes to mendicate a round of applause, — the natural reward of a poor player." *

Walter Scott's account of Erskine in the Edinburgh theatre.

He returns to London.

Erskine wished much to have crossed over into Fife, that he might have revisited St. Andrew's — above all, he said, "Lady Buchan's Cove," the "Scores," the "Witch Lake," across which he had often swam — and the room in which he had learned to dance "*shantrews:*" but, without ever again beholding these scenes, he was forced to return to be present at a great public dinner to be given in England, to celebrate the Queen's acquittal.

When these rejoicings had passed away, he fell back into the ordinary routine of private life, which, I am deeply concerned to say, was no longer very happy for him, nor very

* Life, by Lockhart, vi. 369.

creditable. From his unlucky purchase of land in Sussex, from a bad investment of a large sum in the American funds, and from other acts of imprudence, he became straitened in his circumstances. A gentleman in Derbyshire, from admiration of his public character, had left him by will a considerable landed estate, but the will was defeated by the ignorance of a country attorney, who recommended that the testator should "suffer a recovery" to confirm it, whereby it was rendered invalid.* Having parted with his splendid mansion in Lincoln's Inn Fields, as well as his villa at Hampstead, he now lived in a lodging in Arabella Row, Pimlico, moving occasionally to a cottage in Sussex, which he called Buchan Hill—and he had contracted a second marriage—when, how, or with whom I have not learned upon any authority.

His imprudences and distressed circumstances.

I cannot venture, *ex cathedra*, to say lightly, as Sheridan did:

> "When men like Erskine go astray,
> Their stars are more in fault than they."

Considering his years, his station, the feelings of those who looked up to him, and his own lively perception of what was right, his errors are attended with considerable aggravation. "The usual course, on such occasions, is to say: *Taceamus de his* — but History neither asserts her greatest privilege, nor discharges her higher duties, when, dazzled by brilliant genius or astonished by splendid triumphs, or even softened by amiable qualities, she abstains from marking those defects which so often degrade the most sterling worth, and which the talents and the affections that they accompany, may sometimes seduce men to imitate."† However, if I conceal none of his errors which have come to my knowledge, I hope I shall not be generally blamed for not curiously inquiring into them.

* He used to give an amusing account of the attorney who came to him after the testator's death to announce the intelligence of his being now owner of a great estate, concluding thus: "And your Lordship need have no doubt as to the validity of the will; for, after it was made, *we suffered a recovery* to confirm it." This legal absurdity is corrected by a bill I had the honour to introduce into Parliament.

† Lord Brougham.

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His supposed habit of eating opium.

It is said, that to relieve himself from the depression of spirits under which he sometimes laboured, he got into the pernicious habit of eating opium; but I think this statement must be incorrect, for in his correspondence he ever continued to display his wonted playfulness, and when he appeared in society I can testify that he was gay, lively, and debonaire.* Being asked by George Sinclair his opinion respecting a paper currency, he wrote back merrily, that "his complaints now related more to the *quantity* than the *quality* of Bank-notes." We have an agreeable representation of the somewhat eccentric, but ever gentleman-like manner which still marked him, in the Journal of an American minister: "At an evening party at the Duke of Cumberland's, a nobleman came up and addressed Mr. Rush abruptly: 'I'm going to bring a Bill into Parliament, making it indictable in any stranger, whether ambassador from a republic, kingdom, or popedom, ever to leave his card without his address upon it. How do you do, Mr. Rush, how do you do? I've been trying to find you every where. I'm Lord Erskine:

Account of his hilarity by Rush, the American minister.

Cætera norunt
Susquehanah, Hudson, Connecticut, Mississippi.'

The monologue continued as follows:—'I had a letter for you from my brother the Earl of Buchan; but you have made me carry it so long in my pocket that I lost it. It had no secrets,—it was only to congratulate you on your arrival; he was long a correspondent and friend of your father, and wants to transfer his feelings to you,—that's all; so you

* So early as the year 1796, the "Pursuer of Literature" had impudently written,

"In state affairs all barristers are dull,
And Erskine nods,—*the opium in his skull*;"

adding, in a note, "Mr. Barrister Erskine is *famous* for taking opium." But no faith is to be given to this libeller, either when he attacks classes or individuals.

The Right Hon. T. Erskine has since written to me, "This story about the habit of taking opium I believe to be wholly without foundation. His constitutional hilarity and elasticity of spirit *never* required it. He always had the faculty of throwing off his mind upon entering into society all subjects of care and annoyance, with the ease with which a man puts off his great coat upon entering into a house. He required neither stimulus nor anodyne."

can write to him as if you had received it.' His Lordship added, that 'he had always loved the United States, and hoped to visit them yet, as he was an old sailor and cared nothing for storms.'" In a subsequent entry in the same journal we have the following amusing notice:—"Lord Erskine called upon me according to promise. I pass by all, to come to what he said of Burke. My boys being in the room, he asked if I had found a good school for them? I said they were at present with Mr. Foothead in my neighbourhood. 'You are lucky,' he said, 'if Burke's recommendation goes for any thing, for he thought well of him as a teacher of the classics. What a prodigy Burke was!' he exclaimed. 'He came to see me not long before he died. I then lived on Hampstead Hill. "Come, Erskine," said he, holding out his hand, "let us forget all! I shall soon quit this stage, and wish to die in peace with every body, especially you!" I reciprocated the sentiment, and we took a turn round the grounds. Suddenly he stopped. An extensive prospect broke upon him. He stood wrapt in thought, gazing on the sky as the sun was setting. 'Ah, Erskine,' he said, pointing towards it, 'You cannot spoil that, because you cannot reach it,—it would otherwise go,—yes, the firmament itself, —you and your reformers would tear it all down.'* I was much pleased with his friendly familiarity, and we went into the house, where kind feelings between us were further improved. A short time afterwards he wrote that attack upon the Duke of Devonshire [Bedford?], Fox, and myself, which flew all over England, and perhaps the United States. All this his Lordship told in the best manner. In my form of repeating it I cannot do him justice. Desiring to hear something of Burke's delivery from so high a source, I asked him about it. 'It was execrable,' said he. 'I was in the House of Commons when he made his great speech on American

* The Right Hon. T. Erskine says: "Mr. Rush has spoiled Burke's sarcasm. Upon being conducted by my father to his garden, through a tunnel under the road that divided the house from the shrubbery, all the beauty of Kenwood (Lord Mansfield's) and the distant prospect burst upon them." "Oh," said Burke, "this is just the place for a Reformer — all the beauties are beyond your reach."

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conciliation, the greatest he ever made. He drove every body away. I wanted to go out with the rest; but was near him, and afraid to get up, so I squeezed myself down and crawled under the benches like a dog, until I got to the door without his seeing me, — rejoicing in my escape. Next day I went to the Isle of Wight. When the speech followed me there, I read it over and over again. I could hardly think of any thing else. I carried it about me, and thumbed it until it got like wadding for my gun.' Here he broke out with a quotation from the passage beginning, "But what, says the financier, is peace without money?" which he gave with a fervour showing how he felt it. He said that he was in the House when he threw a dagger on the floor in his speech on the French Revolution, and it had like to have hit my foot: it was a sad failure; but Burke could bear it.' He sat upwards of an hour, leaving me to regret his departure."

Our Ex-Chancellor had not for some years visited Westminster Hall,— Garrow, Shepherd, Best, Marryat, and all his old associates having disappeared, and a new race having sprung up who knew him only by reputation; but at the Alfred Club, to which he belonged, he would still occasionally mount upon a table and give a specimen of his rhetorical powers, again fighting over fields that he had won. Nay, though steadily professing a belief in the Queen's innocence, he criticised the manner in which the prosecution against her had been conducted, and showed the line of examination and of argument by which an adverse decision against her might have been obtained.

His last letter to Dr. Parr.

He likewise still kept up a correspondence with his absent friends, and sent them metrical scraps, with which he tried to fill up his leisure. The following is his last letter to one of the warmest of his admirers: —

"Buchan Hill, Feb. 17. 1822.

"My very dear Parr,

"If you wonder why I have not sooner thanked you for your most kind and delightful letter, which I shall keep as an heir-loom, it can only be from not having duly considered how difficult it is to find words to acknowledge it. I have read it over and

over again, and my children shall read it hereafter. There was an inaccuracy in my little sonnet upon the infant Hampden — which should run thus : —

'Thy infant years, dear child, had pass'd unknown,
As wine had flown upon thy natal day ;
But that the name of Hampden fires each soul,
To sit with rapture round thy birthday bowl —
Honest remembrance of his high renown
In the great cause of law and liberty.

Should Heaven extend thy days to man's estate,
Follow his bright example ; scorn to yield
To servile judgments ; boldly plead the claim
Of British rights, and should the sacred flame
Of eloquence die in corrupt debate,
Like Hampden, urge their justice in the field.'

"These last lines may one day get this young gentleman hanged, unless he can take one just turn in hanging very many who so richly deserve it.

"Yours, very affectionately,

"ERSKINE."

Dr. Parr, in his will, thus testified his feelings for his patriotic correspondent: — "I give to the right honourable Lord Erskine a mourning ring, as a mark of my unfeigned respect for his noble exertions in defending the constitutional rights of juries and the freedom of the press, and for his vigorous and effectual resistance to the odious principle of constructive and accumulative treasons, — and I thankfully add — for his disinterested acts of kindness to my sister and myself." *

To support the cause of the Greeks, in the autumn of the

Correspondence between Erskine and Dr. Parr.

* The lawyer and the divine had long been accustomed to praise each other very lavishly. Erskine writes, soon after the State Trials in 1794, — "The approbation of such an excellent judge of every accomplishment is a great prize. It was not for nothing that I left the full-monied term of last November at Westminster. No, I am no better than my neighbours, — I was only prudently preaching in these days of innovation for coin not subject to be debased in the esteem and approbation of such men as yourself; and I have so far succeeded, by the dint of sheer honesty (for I have little else to boast of), as to be compared to Demosthenes and Cicero, by one of the very few who are capable of estimating either of them, and who ought to take the lead in England, whether ancient learning and eloquence are to be judged of in the abstract, or compared with the shadows which their descended radiance still gives birth to in our latter days." When the two met, their flattery seems to have been still more intense. On one occasion, Parr, at last, as the highest recompence that could be bestowed, said, "When you die, I will write your epitaph." Erskine replied, "This is almost a temptation, my dear doctor, instantly to commit suicide!"

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His pamphlet in favour of the Greeks.

year 1822 Erskine published a pamphlet, in the shape of a "Letter to Lord Liverpool;" which, if it be marked by a growing false taste in composition, proves a true and unabated love of freedom. He presented a copy of it to a lady of literary celebrity, with the following note: —

His letter, presenting a copy of it, to Lady Morgan.

"DEAR LADY MORGAN,

"A long time ago, in one of your works (all of which I have read with great satisfaction), I remember you expressed your approbation of my style of writing, with a wish that I would lose no occasion of rendering it useful. I wish I could agree with your Ladyship in your kind and partial opinion; but as there never was an occasion in which it can be more useful to excite popular feeling than in the cause of the Greeks, I send your Ladyship a copy of the second edition, published a fews days ago.

"With regard and esteem, &c. &c. E.

"No. 13. Arabella Row, Pimlico, London,
October 11. 1822."

Lady Morgan, when first introduced to him a good many years before, wrote this account of him to a friend: "I was a little disappointed to find that Erskine spoke like other persons, — was a thin, middle-aged gentleman, and wore a brown wig; but he was always delightful, always amusing, frequently incoherent; and, I thought, sometimes affectedly wild, at least paradoxical." Now she wrote, with great candour and kindness of heart: "The pamphlet for the Greeks is worth citing as a testimony to prove that years do not make age, and that freshness of feeling and youthful ardour in a great cause may survive the corporeal decay which time never spares, even to protracted sensibility."

Extracts from his pamphlet on the Greeks.

I give one or two specimens to justify this criticism: "I feel, whilst I am writing, that the ink must first have become blood, to enable me fitly to express my detestation and abhorrence of their Turkish oppressors. To judge of what the Greeks under good government are capable of being, we have only to look back to what they have been. Their pedigrees, in which we can trace so many great men who never should have died, ought to protect them from the Saracens, who cannot show in all their escutcheons a single man who

should have lived." Proposing to *eject* the Turks from Europe, he declares that "he would confide the matter to some long-practised diplomatist, with the assistance of a lawyer to draw up the *notice to quit*." He does not go on to explain how the writ of *habere facias possessionem* was to be executed.—But it should be recollected that at this time such sentiments were shared by the most distinguished men. Byron was actually carrying arms in the great enterprise; and Lord Dudley, though a non-combatant, wrote to the Bishop of Llandaff, "I have always considered it the greatest disgrace of Christendom to suffer these hated barbarians, the Turks, to remain encamped upon the finest and most renowned part of Europe for upwards of four centuries—during at least two of which it has been in our power to drive them out whenever we pleased; let us at least have one civilised and Christian quarter of the globe, although it be the smallest."

In advocating the liberty of the Greeks, Erskine showed that he had become a zealous convert to the abolition of the African slave trade, forgetting even that he had once been deluded by the apparent happiness which he had seen the negroes enjoying in their midnight dances in the West Indies. After giving an affecting description of the horrors of the middle passage, particularly the slaves jumping overboard to be devoured by the sharks, which he says he had frequently beheld, he adds,—"When, after all this, it fell at last to my lot, and through ways as unaccountable as unexampled, to preside in the Lords' House of Parliament, on their deliverance—to hold up in my hands the great charter of their freedom, and with my voice to pronounce that it should be law, your Lordship, I am sure, whom I respect and regard as a man of honour and feeling, will rather approve than condemn my retaining the whole subject of slavery in the most affecting remembrance." *

* I am sorry to say that the lawyers were the last in the community to support the rights of their black brethren. Wilberforce, in his Diary, says,—"That the general bias of the Bar was in favour of an established trade in slaves with Africa, was confirmed by the defence which burst from the

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Erskine was thus employed during the visit of George IV. to the Scottish metropolis. He privately expressed a wish that he might have been of the party, — to point out the beauties of his "own romantic town" to the first Brunswick Sovereign who had "kept court in Holyrood," but there was a complete alienation between "Tom" and his old patron, who now hated all liberal men as well as liberal principles, and by-and-by could with great difficulty be persuaded by his Tory Ministers to agree to the emancipation of the Catholics.

His pamphlet on "Agricultural Distress"

Though no longer attending in Parliament, nor even making speeches at anniversary dinners, our Ex-Chancellor was still desirous of keeping his name before the public,—or I ought, perhaps, rather to say, of rendering service to the country,—and in the beginning of the year 1823 he published a pamphlet, which proved to be his last; for though his figure was still juvenile and his eye piercing, his career was near its close. The all-absorbing subject of the day was "Agricultural Distress," which, notwithstanding the protecting sliding scale of 1815, intended to prevent the price of wheat falling under eighty shillings the quarter, was now said to be dreadful; and certainly Erskine's attempts to raise wheat on land intended by nature only for the production of birch brooms had turned out very disastrous. In his "Letter to the Proprietors and Occupiers of Land, on the Causes and Remedies for the Decline of Agricultural Prosperity," he still harps upon "insufficient protection," and the "burdens on land;"* but he makes some good observations on the abuses of the old Poor Law, which many are so eager to restore. He thus illustrates his objection to the "allowance system" (*i. e.* apportioning parish relief according to the

He exposes the abuses of the old Poor Law.

boisterous Thurlow, and for a moment trembled upon the lips of Erskine." . . . . "The Bar were all against us upon the question of the African Slave Trade. Fox could scarcely prevent Erskine from making a set speech in favour of the trade."

* "It was well observed by Mr. Holme Sumner, that a successful clamour for cheap bread, by the encouragement of foreign importers, would soon leave the people no bread at all. No schemes for the sustentation of the poor, however judicious, will be attended with any material relief to the country, until we shut our ports by a higher scale than we have adopted." — *Lord Erskine's Pamphlet.*

number of the family and the price of corn) then prevailing over the south of England: "A friend of mine in Sussex had a useful servant, who managed his small farm, and, being satisfied with his services, gave him higher wages than the common rate, a comfortable house to live in, besides firewood, with some little advantages which occasionally occurred. Nevertheless, this innocent-minded man, in a state of breathless agitation, addressed his master as follows: 'Master, be I bound to maintain five children?' To which the master said, 'Whose children are they?' 'Why, I believe them to be my own,' was the answer; to which the gentleman replied, 'Who else should maintain them?' 'Why, *the parish*,' replied the countryman, still more agitated. 'What can you mean by that?' said the master; 'have you not sufficient wages to maintain your wife and children comfortably?' 'Why, to be sure, I have,' said the countryman, 'thanks to your honour's kindness; my wife is a sober, good woman, so that we lays by a few shillings a week; but why be I to have no money from the parish, when every one else is paid who has children?' The end of this dialogue was, that the man was directed never to think of the *parish* any more; and he now lives contented in his place."

The public was disposed to applaud what was good, without criticising severely what might be questionable, in the writings or actions of an old favourite. He was now regarded with general fondness. Annually, at a dinner which he was not asked to attend, that his praise might be sounded more freely — given to celebrate the acquittal of Hardy in 1794, — his health was drunk with increasing enthusiasm — the company, on account of the tergiversation of his colleague, drinking in solemn silence "The memory of Sir Vicary Gibbs." Ridgway, under his revision, had a few years before published a collection of his speeches at the Bar. To my utter astonishment, it never reached a second edition; but it was now in the hands of all who had any taste for genuine oratory, and it proved that his great fame as an advocate was scarcely equal to his merits. The "Indian Chief" was declaimed by schoolboys, — lawyers conned, night and day, his

Publication of his Speeches.

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arguments against constructive treason, — and his analysis of mental alienation in his defence of Hadfield was studied and admired by philosophers. He had lived sufficiently both to nature and to glory, and if he had survived much longer, he might have permanently dimmed his reputation by the faults and follies into which he might have fallen. But while it seemed that the strength of his constitution could only be undermined by a long decay, an acute disorder saved him from these perils.

CHAPTER CXC.

CONCLUSION OF THE LIFE OF LORD ERSKINE.

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He meditates another visit to Scotland.

DURING his short visit to Scotland in the year 1820, Erskine had been in a perpetual hurry and bustle, and had been constantly subjected to the public gaze. He longed to contemplate in repose the scenes of his infancy, and to enjoy an affectionate intercourse with his surviving relatives. His eldest brother, the Earl of Buchan, was now residing at Dryburgh Abbey, in Berwickshire, and having by long economy repaired the shattered fortunes of his family, was in comparative wealth. Henry, his second brother, had paid the debt of nature, but had left a widow—a lady of superior understanding and most agreeable manners, to whom, as well from her own merits as from a regard to the memory of the deceased, he was warmly attached. He likewise desired to form an acquaintance with the junior branches of his noble house, and for its honour to give them the advantage of his experience in directing their pursuits in life. He therefore resolved, in the autumn of 1823, to revisit his native land and to pass the ensuing winter there. When he intimated his wish to go by sea, he was reminded that the equinoctial gales were to be expected; but, expressing a great dislike of being boxed up in the mail coach, or posting over 400 miles of dusty road, he added:—"What is a puff of wind on the German Ocean to an old sailor who has often combated a tornado in the West Indies?" Accordingly he embarked at Wapping in a Leith smack, accompanied by one of his sons.

His resolution to go by sea.

At first the weather was propitious, but when they were abreast of Harwich a violent gale arose from the north-north-east, accompanied with rain and sleet. The "old sailor" would remain on deck to show his hardihood,—till he found himself seriously indisposed. In a few hours it turned out that he was

He is taken ill on the voyage.

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attacked with inflammation in the chest — a complaint from which he had suffered before, and against which he ought cautiously to have guarded himself. When the ship reached Scarborough he was so seriously ill that it was necessary to put him ashore. He rallied to a certain degree, and was able by easy stages to reach Almondell, the residence of his sister-in-law. There he had skilful medical advice, and the tenderest attentions which affection and respect could prompt; but he experienced a relapse of his malady, and after suffering severe bodily

His death.

pain with much fortitude,—on the 17th of November 1823 he expired, in the 73d year of his age. I have not been able to obtain any farther authentic particulars of his last hours; but we need not doubt that he now found consolation in the deep religious feelings by which, when he had leisure for reflection, he was ever influenced; and we may humbly express a hope, in his own beautiful language, that, "instead of a stern accuser exposing before the Author of his nature the frail passages in a life generally well directed, their guilt was mitigated by a merciful intercession, and true repentance blotted them out for ever."

His funeral.

Had he died in London, he no doubt would have been honoured with a public funeral, and his mortal remains would have been deposited in Westminster Abbey, near those of his distinguished contemporaries, Pitt, Fox, and Wilberforce. But they moulder in the family burying-place at Uphall, a remote parish in the county of Linlithgow, — the hearse that conveyed them thither being attended only by a few relations and private friends. On this occasion, no solemn knell announced the approach of the illustrious deceased to his last resting-place, — no priest in holy vestment, with book in hand, paced the churchyard, chanting, "I am the resurrection and the life," — no swelling anthem resounded through the fretted aisles of a Gothic minster. In a narrow vault covered by weeds, near a small church, erected since the Reformation, and scarcely to be distinguished from a barn, the unadorned coffin of the immortal Thomas Erskine was placed by the side of his brother Henry; and the company, having reverentially remained

silent and uncovered while the ceremony was performed, departed, after casting a sorrowful look at the spot where he was to repose till the last trumpet should summon him to judgment. — But, though the interment was conducted in the Presbyterian fashion, the horror of Popish rites was so far relaxed in the country, that the reverend Mr. Fergusson, the parish clergyman, prayed, and delivered an impressive address, before the simple procession moved from Almondell, and — without cassock or surplice — he followed it to the grave. — It is to be regretted that the beautiful funeral service in the English Liturgy should be rejected, as superstitious, by our Scottish brethren; but the extempore prayers and exhortations substituted in its place, for the edification and consolation of surviving relations and friends assembled in the house where the body lies, often produce an effect as touching and as salutary. — Dr. Johnson himself has said, —

"Legitimas faciunt pectora pura preces."

His monument.

There is no marble monument erected to Erskine's memory, — nor any mural inscription to celebrate his genius and public services; but the Collection of his Speeches will preserve his name as long as the English language endures, and a simple narrative of his life will best show his claim to the gratitude of posterity.

His will.

On searching his papers no will was to be found, except one dated so far back as the 15th of November, 1782. This had been made in contemplation of an affair of honour which proceeded to a hostile meeting in the field, but ended without bloodshed.* He prefaces the disposition of his property by a declaration that, "from a sense of honour, and not from any motive of personal resentment or revenge, he was about to expose his life to great peril." Nine thousand pounds in 3 per cent. consols and one thousand pounds in bills, stated to be all acquired by his practice at the bar, he left to his then wife, with the highest expressions of confidence and affection,

* He was never fond of any allusion to this affair, as his antagonist was an apothecary. It arose out of an altercation in a ball-room at Lewes.

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for the maintenance of herself and her children, — they to inherit it, after her decease, in equal shares, as they attained twenty-one. But he provided that, as, on account of her youth, she might probably marry again, and as such an event, though by no means deprecated by him, might be incompatible with the interests of his children, upon such second marriage the fund should be transferred to his sister, Lady Anne Erskine, in trust for the purposes above mentioned. By a codicil, dated Oct. 2. 1786, when his property had greatly accumulated, he confirmed his will, and directed equal portions to after-born children. I am afraid that, at last, there was little forthcoming for these bequests to operate upon; but his family prized more his splendid reputation than any riches which he could have transmitted to them, and, without a murmur, thought of him with unmixed veneration and thankfulness.

His fortune.

To be descended from such a parent was indeed a great inheritance. Many generations may pass away before his equal is presented to the admiration of mankind. Of course, I do not refer to his qualifications as a Judge; and can only say of him as a politician, that he was ever consistently attached to the principles of freedom, though by no means above the prejudices of education and country. As a parliamentary debater he was greatly inferior to several of his contemporaries; and even in our own degenerate age we could outmatch him.* But as an ADVOCATE in the forum, I hold him to be without an equal in ancient or in modern times.

Statements by Erskine respecting the manner in which his speeches were reported.

* Some have supposed that his senatorial efforts appear to us generally so indifferent from bad reporting; but the following letter from him to Mr. Wright, the editor of the "Parliamentary Debates" (the original of which is in my possession, a present from my friend Mr. Surtees), shows that he was quite contented with the reports of his speeches in that collection, as being full and faithful: —

"Dear Sir,

"If I did not know from long experience your singular correctness regarding your papers, I should be almost quite sure that you had all the speeches you ever sent me in time for the publication, except two, which, coming too late, you were so kind as to say (and which I hope you will not forget) you would reprint in the manner you mentioned. I am naturally very anxious that after, through your kind attention, so many of my speeches in Parliament appear so nearly as they were spoken, that the one in question should have the same advantage. I shall be in town on Sunday, when I will call on you; and although

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Glory to be gained by an advocate.

Notwithstanding the flippant observations of some who can write and speak very fine sentences, without any notion of the real business of life, and who pretend to despise that for which they themselves would have been found utterly unfit, I boldly affirm that there is no department of human intellect in which the *mens divinior* may be more refulgently displayed. I despise, as much as they can do, the man wearing a gown, be it of bombasin or of silk, who is merely "præco actionum, cautor formularum, auceps syllabarum,"— or who sordidly thinks only of amassing money, and regulates his attendance and his exertions according to the fee marked on his brief. But let us imagine to ourselves an advocate inspired by a generous love of fame, and desirous of honourably assisting in the administration of justice, by obtaining redress for the injured and defending the innocent,— who has liberally studied the science of jurisprudence, and has stored his mind, and refined his taste, by a general acquaintance with elegant literature,—who has an intuitive insight into human character and the workings of human passion, — who possesses discretion as well as courage, and caution along with enthusiasm,—who is not only able by his powers of persuasion to give the best chance of

you may not be able to cut out a copy as you did with the others, you might find the book from which the others were taken, from which I would correct it without a moment's delay.

"Yours very sincerely,
"ERSKINE.

"Buchan Hill, near Crawley, Nov. 26th, 1818."

However, he sometimes complained bitterly of the short-hand writers. In one of his letters to Mr. Howell, the editor of the "State Trials," now in my possession, he says: "I am used to the systematic bad grammar of the short-hand writers. None of them (Gurney excepted) ever use any tense but the *present*. If the speaker is speaking of a transaction as ancient as the flood, it is still the *present* tense, 'Noah ENTERS into the ark.' I believe no man who ever spoke extempore ever was so correct in tenses as myself. I have accustomed myself so much to that correctness in common conversation, that I could not depart from it if I were to try; and yet there is hardly any line in the whole copy you sent me in which there is not put into my mouth the present tense, for all that forms the variety of our English verbs. It is truly disgusting with other similar blunders; but, to[1] a person so conversant with their ignorance and stupidity as I am, it can be corrected in half an hour."

Referring to his speech for the "Courier," he says: "I put every thing else aside, and turned the whole from the third person to the first. It is an admirably correct report."

[1] *Sic*, instead of "by,"— and rather careless in this boast of superior accuracy!

success to every client whom he represents in every variety of private causes, but who is able to defeat conspiracies against public liberty, to be carried into effect by a perversion of the criminal law,—and who, by the victories which he gains, and the principles which he establishes, places the free Constitution of his country on an imperishable basis! Such an advocate was Erskine; and although he did creditably maintain his family by professional *honoraries* voluntarily presented to him, he was careless as to their amount, and he was ready on every proper occasion to exert his best energies without any reward beyond the consciousness of doing his duty.* Such an advocate, in my opinion, stands quite as high in the scale of true greatness as the Parliamentary leader who ably opens a budget, who lucidly explains a new system of commercial policy, or who dexterously attacks the measures of the Government. Certainly, different qualities of mind as well as different acquirements are demanded for these two kinds of eloquence; and it may be admitted that in senatorial deliberations there is a greater scope for an enlarged view of human affairs, and that there only can be discussed the relative rights, duties, and interests of nations. But the forensic proceeding, though between private parties, or between the state and individual citizens, and though confined to a comparatively narrow field of investigation and of argument, has great advantages, from the intense and continued interest which it excites,—for, like a grand drama, it has often a well-involved plot, and a catastrophe which cannot be anticipated, rousing all the most powerful sympathies of our nature,—and sometimes, as on the impeachment of Lord Strafford, or the Treason Trials of 1794, the fate of the empire may depend upon the verdict. Look to the recorded efforts of genius in both departments. I will not here enter into a comparison of the respective merits of the different sorts of oratory handed down to us from antiquity, but I may be allowed to observe that, among ourselves, in the hundred and

Erskine as an Advocate.

* *E. g.* When counsel for Hardy, Horne Tooke, and Thelwall, he pleaded *for love*. Indeed, it is contrary to professional etiquette to take a fee in high treason.

fifty volumes of Hansard, there are no specimens of Parliamentary harangues which as literary compositions are comparable to the speeches of Erskine at the Bar, with the exception of Burke's, —and they were delivered to empty benches. Do not, therefore, let it be assumed that Erskine is degraded into an inferior class of artists because he was not a skilful debater. He no doubt would have been a yet more wonderful creature if he had been as great in the Senate as in the Forum; but we should recollect that in the department of eloquence in which he did shine, he is allowed to have excelled, not only all his contemporaries, but all who have attempted it in this island, either in prior or in subsequent times, — while mankind are greatly divided as to the individual to whom the palm of Parliamentary eloquence should be awarded; — and there will again probably be a debater equal to Pitt the father, Pitt the son, Fox, Sheridan, Burke, or Grey, before there arises an advocate equal to Erskine.*

Erskine's mental culture.

Some have denied the possibility of his great pre-eminence, on account of his limited stock of general knowledge; but, although much culture is indispensable to the development of the intellectual powers, and to the refinement of taste, this culture may be applied, without the knowledge of a great variety of languages, and without any deep insight into science. No Greek knew any language but that which he learned from his nurse; and Shakespeare could not have gone through an examination as hard as that of many modern parish schools. Far be it from me to discourage the acquisition of classical and scientific lore: this is delightful in itself,

* I find him thus compared with his rivals in the Court of King's Bench:— "He could not display the peculiar energy of Law, invigorated as it was by a Latinised phraseology, and a pronunciation slightly tinctured with a northern burr. He had not the coarse humour of Mingay, the tormenting pertinacity of Gibbs, or the interrogative astuteness of Garrow; but he possessed an opulence of imagination, a fertility of fancy, a power of commanding at an instant all the resources of his mind, and a dexterity in applying them, which the whole united Bar of England could not equal."

I have heard much speculation respecting the probable success of the younger Pitt, had he remained at the Bar. I think it must have been splendid; but, unless he had exhibited greater variety of manner, and a more familiar acquaintance with the common feelings of mankind, it never could have approached that of Erskine. Fox, in arguing questions of law on Hastings's trial, excited the astonishment and admiration of the Judges; and in every branch of forensic practice he would have been supreme.

and it gives the best chance of success in every liberal pursuit; but where true genius exists, it may be brought into full operation and efficiency by suitable discipline within very narrow limits; and a man may be superior to all others in his art, and be ignorant of many things which it is disgraceful to the common herd of mortals not to know. Let it not be said, therefore, that Erskine could not, better than any other man, lead the understandings and control the passions of his audience when arguing a point of constitutional law, or appealing to the affections of domestic life, because he talked nonsense if he indiscreetly offered an opinion upon a question of prosody, or of political economy. His moderate acquaintance with the Latin poets, and his intense and unremitting study of the best English writers, both in prose and verse, had taught him to think, and had supplied him with a correct, chaste, forcible, and musical diction, in which to express his thoughts. Although, judged by his common conversation, he was sometimes very lightly esteemed, — listen to his discourses when he is rescuing from destruction the intended victim of an arbitrary Government, or painting the anguish of an injured husband, and he appears to breathe celestial fire.

Characteristics of his eloquence.

In considering the characteristics of his eloquence, it is observable that he not only was free from measured sententiousness and tiresome attempts at antithesis, but that he was not indebted for his success to riches of ornament, to felicity of illustration, to wit, to humour, or to sarcasm. His first great excellence was his devotion to his client, and in the whole compass of his orations, there is not a single instance of the business in hand,—the great work of persuading,—being sacrificed to raise a laugh or to excite admiration of his own powers. He utterly forgot himself in the character he represented. Through life he was often ridiculed for vanity and egotism, — but not from any thing he ever said or did in conducting a cause in a court of justice. There, from the moment the jury were sworn, he thought of nothing but the verdict, till it was recorded in his favour. Earnestness and energy were ever present throughout his speeches —

impressing his argument on the mind of his hearer with a force which seemed to compel conviction. He never spoke at a tiresome length; and throughout all his speeches no weakness, no dulness, no flagging is discoverable; and we have ever a lively statement of facts, — or reasoning pointed, logical, and triumphant.

I think I ought particularly to mention the familiar knowledge he displays of the most secret workings of the human mind. How finely he paints the peril arising from the perversion of what is good! "Some of the darkest and most dangerous prejudices of men arise from the most honourable principles. When prejudices are caught up from bad passions, the worst of men feel intervals of remorse to soften and disperse them; but when they arise from a generous though mistaken source, they are hugged closer to the bosom, and the kindest and most compassionate natures feel a pleasure in fostering a blind and unjust resentment." He spoke as his clients respectively would have spoken, being endowed with his genius. "The dervise in the fairy tale, who possessed the faculty of passing his own soul into the body of any whom he might select, could scarcely surpass Erskine in the power of impersonating for a time the feelings, wishes, and thoughts of others." *

Sweetness of his language.

I must likewise mention the delight I feel from the exquisite sweetness of his diction, which is pure, simple, and mellifluous, — the cadences not being borrowed from any model, nor following any rule, but marked by constant harmony and variety. The rhythm of the Indian Chief is, I think, more varied, richer, and more perfect than that of any passage from any other composition in our language.

His attention to trifles to add to the effect of his eloquence.

When the great Lord Chatham was to appear in public, he took much pains about his dress, and latterly he arranged his flannels in graceful folds. It need not then detract from our respect for Erskine, that on all occasions he desired to look smart, and that when he went down into the country on special retainers he anxiously had recourse to all manner of innocent little artifices to aid his purposes. He examined

* Townsend's Eminent Judges, i. 434.

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the Court the night before the trial, in order to select the most advantageous place for addressing the jury. On the cause being called, the crowded audience were perhaps kept waiting a few minutes before the celebrated stranger made his appearance; and when, at length, he gratified their impatient curiosity, a particularly nice wig and a pair of new yellow gloves distinguished and embellished his person beyond the ordinary costume of the barristers of the circuit.*

His general courtesy.

It may be more useful to hold up for imitation his admirable demeanour while engaged in business at the Bar, — to which, perhaps, his success was not less due than to his talents. Respectful to the Judges, although ever ready to assert his independence,—courteous to the jury, while he boldly reminded them of their duties,—free from asperity towards his opponents, —constantly kind and considerate to his juniors,—treating the witnesses as persons, generally speaking, reluctantly attending to assist in the investigation of truth, — looking benevolently even on the *circumstantes*, and glad when he could accommodate them with a seat, — of a gay and happy temperament, enjoying uninterruptedly a boyish flow of animal spirits, and enlivening the dullest cause with his hilarity and good-humour,—he was a universal favourite — there was a general desire, as far as law and justice would permit, that he should succeed, and the *prestige* of his reputation was considered the sure forerunner of victory. I have myself witnessed, from the students' box, towards the conclusion of his career at the Bar, his daily skirmishes and triumphs; but it is vain to try by words to convey to others an idea of the qualities which he displayed, or the effect which he produced.

Character of his eloquence by Butler.

Perhaps I may here appropriately introduce the estimate of other writers, entitled to more weight than mine, of his eloquence and professional qualifications. Butler, who had often heard him, observes: — "He often rose to the highest oratory, but it was always simple; and even in his sublimest flights there was much that was very familiar, but this rather set off than diminished their general effect."†

By Roscoe.

"In examining those particular qualities of Lord Erskine's

* Roscoe, 390. † Butler's Rem. 72.

speeches," says Roscoe, "which contributed more obviously to their success, the most remarkable will appear to be the exact and sedulous adherence to some one great principle which they uniformly exhibit. In every case he proposed a great leading principle to which all his efforts were referable and subsidiary — which ran through the whole of his address, arranging, governing, and elucidating every portion. As the principle thus proposed was founded in truth and justice, whatever might be its application to the particular case, it necessarily gave to the whole of his speech an air of honesty and sincerity which a jury could with difficulty resist." "Juries have declared," says Lord Brougham, "that they felt it impossible to remove their looks from him when he had riveted, and as it were fascinated, them by his first glance. Then hear his voice, of surpassing sweetness, clear, flexible, strong, exquisitely fitted to strains of serious earnestness, deficient in compass, indeed, and much less fitted to express indignation, or even scorn, than pathos, but wholly free from harshness or monotony. No man made fewer mistakes, none left so few advantages unimproved; before none was it so dangerous for an adversary to slumber and be off his guard, for he was ever broad awake himself, and was as adventurous as he was skilful, and as apt to take advantage of any the least opening, as he was cautious to have none in his own battle." "His action," says Espinasse, "was always appropriate, chaste, easy, natural, in accordance with his slender and finely-proportioned figure and just stature. His features, regular, prepossessing, as well as harmonious, bespoke him of no vulgar extraction. The tones of his voice, though sharp, were full, destitute of any tinge of Scottish accent, and adequate to every emergency,—almost scientifically modulated to the occasion. He enlivened those who surrounded him with whimsical conceits, and jokes on what was passing. I had a full share of his *jeux d'esprit*, as my place in court was directly at his back." "Adequately to estimate what Erskine was at this period," says another brother barrister, "we must forget all that the English Bar has produced after him. They will afford no criterion by which he can be ap-

By Lord Brougham.

By Espinasse.

preciated. They are all of inferior clay,—the mere sweepings of the Hall, in comparison. Nor is it easy to form any tolerable idea of him but by having seen him from day to day, from year to year, in the prime and manhood of his intellect, running with graceful facility through the chaos of briefs before him: it is only by that personal experience that it is possible to form any notion of the admirable versatility with which he glided from one cause to another—the irony, the humour, the good-nature with which he laughed down the adverse cause, and the vehemence and spirit with which he sustained his own."

His skill in examining witnesses.

In describing his professional merits, I ought by no means to omit his skill in examining witnesses, upon which the event of a cause often depends, much more than upon fine speaking. —When he had to examine in chief,—not, as in common fashion, following the order of the proofs as set down in the brief,—seemingly without art or effort, he made the witness lucidly relate, so as to interest and captivate the jury, all the facts that were favourable to his client. In cross-examination he could be most searching and severe; but he never resorted to browbeating, nor was gratuitously rude. Often he carried his point by coaxing, and when the evidence could not be contradicted, he would try by pleasantry to lessen the effect of it. Having to cross-examine a coxcombical fellow, belonging to the self-important class of persons sent by the wholesale houses in London to scour the country for orders,—formerly called "Riders," now styling themselves "Travellers,"—he began, "You are a *Rider*, I understand?" "A Traveller, Sir," was the answer. "I might have discovered," replied Erskine, "that you considered yourself *licensed* to use all the privileges of a *Traveller*."—Another of the fraternity having long baffled him, he suddenly remarked, "You were born and bred in Manchester, I perceive?" The witness said, he could not deny it. "I knew it," said Erskine carelessly, "from the absurd tie of your neckcloth." The travelling dandy's weak point was touched; for he had been dressing after Beau Brummel; and, his presence of mind being gone, he was made to unsay the greatest part of his evidence in chief.—On the trial of an action

to recover the value of a quantity of whalebone, the defence turning on the quality of the article, a witness was called, of impenetrable stupidity, who could not be made to distinguish between the two well-known descriptions of this commodity — the "long" and the "thick." Still confounding *thick* whalebone with *long*, Erskine exclaimed, in seeming despair, "Why, man, you do not seem to know the difference between what is *thick* and what is *long!* Now I tell you the difference. You are *thick*-headed, and you are not *long*-headed."—I myself remember when a student being present when he was counsel for the plaintiff in an action on a tailor's bill, — the defence being, that the clothes were very ill-made, and, particularly, that the two sleeves of a dress-coat were of unequal length. The defendant's witness accordingly swore, that "one of them was longer than the other;" — upon which Erskine thus began: "Now, Sir, will you swear that one of them was not *shorter* than the other?" The witness negativing this proposition, after an amusing reply the plaintiff had the verdict. — The more difficult and delicate task of re-examination he was in the habit of performing with equal dexterity, — not attempting clumsily to go over the same ground which he had before trod, but, by a few questions which strictly arose out of the cross-examination, restoring the credit of his witness, and tying together the broken threads of his case.

Erskine as an author.

As a mere author, I doubt whether he would ever have emerged from obscurity. From his peculiar temperament he seems to have required the excitement of listeners, and of controversy, and of instant applause, to brighten his imagination and to sharpen his faculties. Most of his prose compositions passed through several editions, as people had a curiosity to see an Ex-Chancellor become a romance writer, or a pamphleteer; but if they had been published anonymously, or as written by John Smith or Thomas Tomkins, they would not even have reached the dignity of being censured by gods or men, or the columns of a newspaper.

His prose writings.

His verses.

We have seen that he likewise dabbled in poetry; but he prudently did not attempt more than *vers de société*,—and some of his metrical effusions are well calculated to promote the

amusement of a drawing-room. I will here add a few to those which I have already introduced.

He had a kindness for his countryman Park, afterwards a Judge of the Court of Common Pleas, but occasionally quizzed him; and he wrote upon him the following lines, which, with a little alteration, might have been applied to himself: —

Epigram on James Allan Park.

"James Allan Park
Came naked stark
From Scotland;
But now wears clo'es,
And lives with beaux
In England."

On Judge Ashurst.

On the long, lanky visage of Mr. Justice Ashurst, before whom he daily practised, he penned the following couplet: —

"Judge Ashurst, with his *lantern jaws*,
Throws *light* upon the English laws." *

Lines in compliment to Lady Payne.

Being much indisposed during dinner at Sir Ralph Payne's, in Grafton Street, he retired to another apartment, and reclined for some time on a sofa. In the course of the evening, being somewhat recovered, he rejoined the festive circle; and Lady Payne inquiring how he found himself, he presented to her the following couplet: —

"'Tis true I am ill, but I need not complain,
For he never knew *pleasure* who never knew PAYNE."

On his pony "Jack."

He composed the following lines to the memory of a beloved pony, "Jack," who had carried him on the Home Circuit when he was first called to the Bar, and could not afford any more sumptuous mode of travelling: —

"Poor Jack! thy master's friend when he was poor,
Whose heart was faithful, and whose step was sure,
Should prosperous life debauch my erring heart,
And whisp'ring pride repel the patriot's part;

---

* It has been said that he was the author of the epigram on Judge Grose —

"Qualis sit Grotius judex, uno accipe versu,
Exclamat, dubitat, stridet, balbutit et errat;"

but Latin versifying was unknown at St. Andrew's in his time, and he would hardly (if he could) have given utterance to such a savage effusion.

> Should my foot falter at Ambition's shrine,
> And for mean lucre quit the path divine;
> Then may I think of thee when I was poor,
> Whose heart was faithful, and whose step was sure."

Having thus spoken, in one of his pamphlets, of Frederica Duchess of York, "a lady whose talents, manners, and distinguished accomplishments I should have been more desirous to record in unfading numbers; but no man can add a cubit to his stature, and I must therefore content myself, in this note, to express my affection, admiration, and respect," and being afterwards at Oatlands, the company insisted on his inditing some verses, for which they maintained he had a genius. He extemporised this sextain: —

On himself.

> "Tom Erskine was once sailor, soldier, and lawyer,
> A cross, beyond doubt, 'tween the Devil and Sawyer;
> He tried all the tricks of the old common law,
> Till to Chancery sent, which can cure every flaw;
> So merrily, merrily let him live now,
> A planter of trees, and a holder of plough."

On Lewis the dramatist.

On another visit at Oatlands, where he met Lewis the dramatist, Lady Anne Cullen Smith, and other wits, male and female, the company amused themselves in writing, after dinner, what they called "Threadpaper Rhymes." Erskine, having borrowed Lewis's pencil, returned it with the following impromptu: —

> "Your pencil I send, with thanks for the loan;
> Yet writing for fame now and then,
> My wants I must still be content to bemoan,
> Unless I could borrow — your pen."

Having, in another stanza, glanced with some severity at female failings, Lewis thus answered: —

> "Lord Erskine, at women presuming to rail,
> Says wives are tin canisters tied to our tail;
> While fair Lady Anne, as the subject he carries on,
> Feels hurt at his Lordship's degrading comparison.
> Yet wherefore degrading? Considered aright,
> A canister's useful, and polished, and bright;
> And should dirt its original purity hide,
> That's the fault of the puppy to whom it is tied."

Erskine immediately put in his rejoinder: —

> "When smitten with love from the eyes of the fair,
> If marriage should not be your lot,
> A ball from a pistol will end your despair —
> It's safer than canister shot."

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Impromptu, written by LORD ERSKINE *at Oatlands, on receiving from the* DUCHESS OF YORK *a Lock of Hair of the late lamented* CHARLES JAMES FOX.

On a lock of Mr. Fox's hair.

"Could relics, as at Rome they show,
Work miracles on earth below,
This little hallow'd lock of hair
Might soothe the patriot's anxious care;
Might, to St. Stephen's Chapel brought,
Inspire each virtuous, noble thought,
As when those ancient benches rung,
Whilst thunder roll'd o'er Fox's tongue;
Then might Old England hold more high
Her proud and matchless liberty.
Alas! alas! the vision 's vain,
From the dark grave none come again."

He afterwards printed for private circulation a poem of considerable length, which he thus prefaced. "The following lines were occasioned by my having, at the instance of my bailiff in Sussex, complained to a neighbour of his rookery,—the only one in that part of the country: but having been afterwards convinced of the utility of rooks, I countermanded my complaint, and wrote 'THE FARMER'S VISION.' The lines are very incorrect and unfinished, being sketched only as a domestic amusement to inspire humane and moral feelings in a new generation of my family, and with that view were inscribed to my eldest grand-daughter, Frances Erskine, as the fair poetess of St. Leonard's Forest, who, not then sixteen years of age, could have handled the subject much better herself. It is indeed so capable of being made interesting, that I would have prolonged the vision, and worked it up into a poem, but for an insuperable objection, viz. that I am not a poet. It is not fit for publication; a few copies are only printed for friends, who asked for them, as it was too long to make them in writing.—*Buchan Hill, Sussex, Dec.* 25. 1818.'"—I copy a short specimen:—

The Farmer's Vision.

Defence of rooks.

"Old Æsop taught vain man to look
In Nature's much-neglected book,
To birds and beasts by giving speech,
For lessons out of common reach.
They whisper truths in reason's ear,
If human pride would stoop to hear,—
Nay, often in loud clamours crave
The rights which bounteous nature gave.
A flock of rooks, my story goes,
Of all our birds the most verbose ——"

We are then told how the bailiff fired into a congregation of rooks and killed several of them,—when the wounded leader hoarsely thus *appealed to the superior court:* —

"'Before the Lord of this domain
Sure justice should not plead in vain.
And shall he now, with such blind fury,
In flat contempt of judge and jury,
Foul murder sanction in broad day,
Not on the King's, but God's highway?'

"Touch'd with the sharp but just appeal,
Well turn'd at least to make *me feel*,
Instant this solemn oath I took —
NO HAND SHALL RISE AGAINST A ROOK."

Then comes the "Vision."

"A form angelic seem'd to fly
On meteor wing across the sky —"

And he discourses at much greater length, but not more poetically, than the rook, on the duty of humanity to the whole brute creation.

On Plumer's prosy pleading at the bar of the House of Lords.

One day in 1807, when engaged to dine on turtle with the Lord Mayor, he was obliged to sit late on the woolsack. Plumer pleading at the bar with great turbulence and tediousness, and justifying the saying that "his eloquence was, like a tailor's goose, *hot and heavy*,"— the Chancellor was secretly very impatient and angry, but was observed to be writing diligently. Bishop Majendie then came up to Lord Grenville and said, "Lord Erskine seems very intent on this cause." Lord Grenville answered, "My Lord Chancellor always takes a note." Lord Holland, who was very familiar with him, and suspected from his manner that there was something unusual in his occupation, had overheard the conversation, and asked for a sight of his note-book. Being produced, it was found to contain the following lines addressed to Plumer—the ink not yet dry: —

"Oh that thy cursed balderdash
Were swiftly changed to callipash!
Thy bands so stiff, and snug toupee,
Corrected were to callipee;
That since I can nor dine nor sup,
I might arise and eat thee up!"

Being once in a festive party, where every one present was

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required to make a new riddle, he most indecorously proposed the following: —

"De quodam Rege."

"DE QUODAM REGE.

"I may not do right, though I ne'er can do wrong;
I never can die, though I may not live long:
My jowl it is purple, my head it is fat —
Come, riddle my riddle. What is it? What? What?"

He was, nevertheless, a devoted friend to monarchy, and in his graver mood, he was ready to do justice to the firmness of purpose and domestic virtues belonging to the Monarch, with whose appearance and phraseology he now used such unjustifiable freedom.

His success in society.

Without any refined wit, and with only a moderate portion of humour, he had much success in society from his constant hilarity and well-bred respect for the feelings of others. Fond as he was of talking, he never attempted to engross the whole conversation to himself, and, in choosing the topics of his conversation, and the manner in which he enlarged upon them, he considered the company he was addressing — not declaiming interminably, as if the listeners, whether ladies, military officers, members of parliament, or judges, were pupils to be instructed in a lecture-room, — nor entering into a disquisition on some recondite question with another reckless controversialist, each of them caring as little for the rest of the company as if the two were disputing together on Salisbury Plain. He paid to sex and station the deference due to them, and he was eager to bring forward into notice the most unobtrusive of all who were present.

His egotism accounted for.

It must be confessed that he much too often introduced stories of which he was himself the hero. — His egotism is thus ingeniously and elegantly accounted for and palliated: "With an appetency of applause equal to that of which the celebrated Garrick was accused, he saw the evidences of his triumph daily, and was intoxicated with the incense. The loud laughter or tears of the audience, the occasional faintings in the boxes, could not more delight the soul of the modern Roscius, open to all the titillations of vanity, than did the visible emotions of jurymen — their relaxed muscles at

the jest — the dark look of indignation at the invective — the plaudits, scarcely suppressed in deference to the Court — the favourable verdict — gladden the heart of the sensitive orator. Both were alike players, strutting their hour upon the stage, and would alike enact their parts over again, too frequently *encore* their best things at private rehearsals, making their homes a theatre, and their friends an audience." *

His egotism ridiculed.

This propensity of Erskine drew down upon him much satire — without being at all repressed. A newspaper apologised for breaking off a speech of his at a public dinner in the middle because their stock of I's was quite exhausted. Caricatures of him were published, under the name of "Counsellor Ego," — and when he was to be raised to the peerage, it was proposed that he should take the title of "Baron Ego, of Eye, in the county of Suffolk." "The Pursuits of Literature" introduced this Dialogue between Octavius and the Author, who had been talking rather vain-gloriously of his own exploits: —

In the Pursuits of Literature.

"OCTAVIUS.
This of yourself?

AUTHOR.
'Tis so.

OCTAVIUS.
You're turn'd plain fool,
A vain, pert prater, bred in *Erskine*'s school."

By Canning in the Anti-Jacobin.

Canning, in the "Anti-Jacobin," in the following pretended report of his speech at a dinner of the "Whig Club," attempted to ridicule his admiration of himself and of the French Directory, then lately established in power: "He had not the advantage of being personally acquainted with any gentleman of the Directory; — he understood, however, that one of them (Mr. Merlin), previous to the last change, had stood in a situation similar to his own; he was, in fact, nothing less than a leading advocate and barrister, in the midst of a free, powerful, and enlightened people. The conduct of the Directory, with regard to the exiled deputies, had been objected to by some persons on the score of a pretended rigour. For his part, he should only say that, having

* Townsend's Eminent Judges, i. 458.

been, as he had been, both a soldier and a sailor, if it had been his fortune to have stood in either of these two relations to the Directory — as a man and as a major-general, he should not have scrupled to direct his artillery against the national representation: — as a naval officer he would undoubtedly have undertaken for the removal of the exiled deputies: admitting the exigency, under all its relations, as it appeared to him to exist, and the then circumstances of the times, with all their bearings and dependencies, branching out into an infinity of collateral considerations, and involving in each a variety of objects, political, physical, and moral; and these, again, under their distinct and separate heads, ramifying into endless subdivisions, which it was foreign to his purpose to consider. Mr. Erskine concluded by recapitulating, in a strain of agonising and impressive eloquence, the several more prominent heads of his speech: he had been a soldier and a sailor, and had a son at Winchester school, — he had been called by special retainers, during the summer, into many different and distant parts of the country — travelling chiefly in post-chaises. He felt himself called upon to declare, that his poor faculties were at the service of his country — of the free and enlightened part of it at least. He stood here as a man — he stood in the eye, indeed in the hand, of God — to whom (in the presence of the company and waiters) he solemnly appealed. He was of noble, perhaps royal blood — he had a house at Hampstead — was convinced of the necessity of a thorough and radical reform. His pamphlets had gone through thirty editions — skipping alternately the odd and even numbers. He loved the Constitution, to which he would cling and grapple — and he was clothed with the infirmities of man's nature. He would apply to the present French rulers (particularly Barras and Rewbell) the words of the poet —

> 'Be to their faults a little blind,
> Be to their virtues very kind;
> Let all their ways be unconfin'd,
> And clap the padlock on their mind.'

And for these reasons, thanking the gentlemen who had done him the honour to drink his health, he should propose '*Merlin, the late Minister of Justice, and Trial by Jury.*'"

By Cobbett.

Cobbett about the same time published the following notice of one of his parliamentary harangues: "Mr. Erskine delivered a most animated speech in the House of Commons on the causes and consequences of the late war, which lasted thirteen hours, eighteen minutes, and a second, by Mr. John Nicholl's stop watch. Mr. Erskine closed his speech with a dignified climax — 'I was born free, and, by G—d, I'll remain so.' [A loud cry of *Hear, hear!* in the gallery, in which were citizens Tallien and Barrere.] On Monday three weeks we shall have the extreme satisfaction of laying before the public a brief analysis of the above speech, our letter-founder having entered into an engagement to furnish a fresh fount of I's." — This distributor of *honours* afterwards offered him the title of "Lord *Clack*mannon."

By Lord Byron.

A stronger proof of his incorrigible habit, we have in the following entry in the Journal of his friend and general admirer, Lord Byron: "A goodly company of lords, ladies, and wits. There was Erskine, good, but intolerable; — he jested, he talked, he did every thing admirably; — but then he would be applauded for the same thing twice over. He would read his own verses, his own paragraphs, and tell his own stories, again and again — and then the TRIAL BY JURY!!! I almost wished it abolished, for I sat next him at dinner. As I had read his published speeches, there was no occasion to repeat them to me."

By Miss Burney.

In the Life of Dr. Burney by his daughter, we have a very lively picture on the same subject: she is giving an account of a party at Mrs. Crewe's, at which Lord Loughborough and Mr. Burke were present: "Mr. Erskine had been enumerating fastidiously to Mrs. Crewe his avocations, their varieties, and their excess; till at length he mentioned, very calmly, having a cause to plead soon against Mr. Crewe, upon a manor business in Cheshire. Mrs. Crewe hastily interrupted him, with an air of some disturbance, to inquire what he meant, and what might ensue to Mr. Crewe. 'Oh, nothing but losing the lordship of that spot,' he coolly answered, 'though I don't know that it will be given against him; I only know for certain that I shall have 300*l.* for it.'

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Mrs. Crewe looked thoughtful; and Mr. Erskine then, finding he engaged not her whole attention, raised his voice as well as his manner, and began to speak of the new Association for reform by the Friends of the People,—descanting in powerful, though rather ambiguous terms, upon the use they had thought fit in that Association to make of his name, though he had never yet been to the society; and I began to understand that he meant to disavow it; but presently he added, 'I don't know, I am uncertain whether I shall ever attend. I have so much to do — so little time — such interminable occupation! However, I don't yet know. I am not decided, for the people must be supported!'" — "This renowned orator," Madame D'Arblay satirically adds, "at a convivial meeting at his own house, fastened upon my father with all the volubility of his eloquence, and all the exuberance of his happy good-humour, in singing his own exploits and praises, without insisting that his hearer should join in the chorus; or rather, perhaps, without discovering from his own self-absorption that this ceremony was omitted."

By Hannah More.

His infirmity is likewise censured by Hannah More, who, I suppose, was silenced when she wished to enlarge upon her own writings and her own good deeds. "Among the chief talkers at the Bishop of St. Asaph's," says she, "was Mr. Erskine. To me he is rather brilliant than pleasant. His animation is vehemence; and he contrives to make the conversation fall too much on himself—a sure way not to be agreeable in mixed company."

He is praised by Miss Seward.

One celebrated "Blue stocking," however, seems to have been almost in love with him when she was well stricken in years, and she bestows enthusiastic commendation on his social powers. "The enchanting Mr. Erskine," writes Miss Seward, "honoured me with frequent attentions in the ball-room at Buxton, and with frequent visits at my lodgings, where he often met Mr. Wilberforce. . . . Did Mr. Erskine tell you of our accidental *rencontre* on the Chatsworth road? I said to my mind, 'What an elegant figure is that gentleman approaching us, who, loitering with a book, now reads, and now holds the volume, in a dropt hand, to contemplate

the fine views on the right! There seems mind in every gesture, every step; and how like Mr. Erskine!' A few seconds converted resemblance into reality. After mutual exclamations, the graceful Being stopped the chaise, opened the door, and, putting one foot on the step, poured all his eloquence upon a retrospect of the hours we had passed together at Buxton, illuminating, as he flatteringly said, one of those seldom intervals of his busy life, in which his mind was left to enjoy undisturbed the luxury of intellectual intercourse."

All impartial persons allowed that, however excessive Erskine's egotism might be, it was accompanied with much *bonhomie*, and was entirely free from arrogance or presumption. Though vain, he never felt any envy or jealousy of others; and instead of trying to stifle the reputation of rivals by open or secret means, he sincerely and cordially praised, and heard praise bestowed upon, what was meritorious in the departments which most excited his own emulation.*

His puns.

When I entered Westminster Hall, it rang with Erskine's jokes,—consisting chiefly of puns,—some of them very good, and some of them requiring his established reputation to make them circulate.—A junior barrister, joining the circuit, had the misfortune to have his trunk cut off from the back of his post-chaise, on which the jocund leader comforted him by saying, "Young gentleman, henceforth imitate the elephant, the wisest of animals, *who always carries his* TRUNK *before him.*"

The example of the Elephant.

He afterwards embraced a favourable opportunity of repeating the same joke. *Polito*, the keeper of the wild beasts in

* Since I wrote these observations, I have received a letter from the Right Hon. Thomas Erskine, in which, referring to Miss Burney's strictures on his illustrious father, he says,—"The merits of 'Evelina' were probably but little known to my father, who seldom read books of that sort. The clever authoress, with great *naïveté*, mentions the fact, that 'Mr. Erskine confined his attention exclusively to Mrs. Crewe;' and thus unconsciously records another instance of the all-pervading infirmity of egotism. My poor father's fault was in not appreciating the sensitiveness of others, and in not perceiving the necessity for controlling this universal passion. He was too artless to disguise his love of praise; but he is entitled to this distinction,—his thirst for approbation never led him to depreciate the merits of others; and his whole life pronounces him innocent of that bitterness of spirit which too often marks the impatience of genius and talent when the appetite of a rival for the common food is too little disguised."

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Exeter Change, having brought an action against the proprietors of a stage coach for negligence, whereby his portmanteau was stolen from the boot of the vehicle, he himself having been riding on the box, — "Why did he not," said the defendant's witty counsel, "take a lesson from his own sagacious elephant, and travel with his TRUNK *before him?*" *

"A man may do what he likes with his own."

Crossing Hampstead Heath, he saw a ruffianly driver most unmercifully pummelling a miserable bare-boned pack-horse, — and, remonstrating with him, received this answer, "Why, it's my own; mayn't I use it as I please?" As the fellow spoke, he discharged a fresh shower of blows on the raw back of his beast. Erskine, much irritated by this brutality, laid two or three sharp strokes of his walking-stick over the shoulders of the cowardly offender, who, crouching and grumbling, asked him what business he had to touch him with his stick? "Why," replied Erskine, "my stick is my own; mayn't I use it as I please?"

Swan with two Necks.

Being counsel for a person who, whilst travelling in a stage-coach which started from the "Swan with two Necks," in Lad Lane, had been upset and had his arm broken, he thus with much gravity began: — "Gentlemen of the jury, the plaintiff in this case is Mr. Beverley, a respectable merchant of Liverpool, and the defendant is Mr. Nelson, proprietor of the Swan with two Necks, in Lad Lane, — a sign emblematical, I suppose, of the number of necks people ought to possess who ride in his vehicles."

"Demurring," and "going to the country."

In an action against a stable-keeper, for not taking proper care of a horse, — "The horse," said Mingay, who led for the plaintiff, "was turned into a stable, with nothing to eat but musty hay. To such feeding the horse *demurred.*" "He should have *gone to the country,*" retorted Erskine. This, though caviare to the multitude, — to a true special pleader is of exquisite relish, — "demurring," and "going to the country," being the technical terms for re-

* The Right Hon. Thomas Erskine, from whom I have this anecdote, adds, — "Polito's portmanteau was put into the boot behind by his own directions; and the jury adopted my father's suggestion, that the loss was owing to his own indiscretion, and gave a verdict for the defendant, to the great indignation of Lord Kenyon, who had told them it was an undefended cause. The joke, perhaps, helped the conclusion."

quiring a cause to be decided on a question of *law* by the Judges, or on a question of *fact* by the jury.

Why is a Resurrection man like a great Bail-counsel?

I must have credit with non-professional readers for my assertion that the following is equally delectable. Billy Baldwin, a low practitioner in the King's Bench, was much employed in bail-business, and moving attachments against the sheriff "for not bringing in the body," *i. e.* for not arresting and imprisoning debtors. Being told that he had sold his house in Lincoln's Inn Fields, now Surgeons' Hall, to the Corporation of Surgeons, "I suppose," said Erskine, "it was recommended to them, from Baldwin being so well acquainted *with the practice of bringing in the body.*"

The Great Seal necessary at a Ministerial fish dinner.

When he was Chancellor, being asked by the Secretary to the Treasury whether he would attend the grand Ministerial fish dinner to be given at Greenwich at the end of the Session, he answered, "To be sure I will; what would your fish dinner be without the GREAT SEAL?"

Malum prohibitum and Malum in se.

I venture on one more, which, though it has a legal aspect, all will understand. His friend Mr. Maylem, of Ramsgate, having observed that his physician had ordered him not to bathe, "Oh, then," said Erskine, "you are *Malum prohibitum.*" "My wife, however," resumed the other, "does bathe." "Worse still," rejoined Erskine, "for she is *Malum in* SE."

His practical jokes.

In the exuberance of his fun he was likewise fond of what may be called practical jokes. The late worthy Sir John Sinclair having proposed that a testimonial should be presented to himself by the British nation, for his eminent public services,—in answer to one of his circulars, Erskine wrote on the first page of a letter in a flowing hand these words, which filled it to the bottom:—

"MY DEAR SIR JOHN,

"I am certain there are few in this kingdom who set a higher value on your public services than myself—and I have the honour to subscribe"—

Then on turning over the leaf was to be found—

"Myself,

"Your most obedient faithful servant,

"T. ERSKINE."

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He would produce his leeches at consultation under the name of "bottle conjurors," and argue the result of the cause according to the manner in which they swam or crawled; — and a still more favourite amusement with him was to make his large Newfoundland dog, Toss, personate the Judge. He had taught this animal to sit with much gravity upon a chair with his paws placed before him on the table, and occasionally he would put a full-bottom wig on his head and a band round his neck — placing a black-letter folio before him. The clients, as we may suppose, were much startled by such exhibitions; but then was the time when he took his amusement, and, rising next morning at cock-crow, he read all his briefs before the Court met, and won all the verdicts.

Instance while at the Bar of his claiming precedence of the Chief Justice of the Common Pleas.

His general urbanity of manner to all classes and degrees of men deserves to be specially recorded. Notwithstanding his occasional effusions about his "noble, if not royal, descent," he was, in truth, free from the slightest taint of arrogance or *hauteur*. Once he asserted, in a marked manner, his precedence as an Earl's son. During the State Trials, in 1794, he thought that Eyre, from the bench, had treated him with indignity; and, both dining at the Old Bailey the same day, he ostentatiously took the *pas* of the Chief Justice. But on ordinary occasions he did not at all presume upon his birth, and he was willing to place himself on a footing of perfect equality with all who approached him.*

His humanity.

I ought farther to mention that humanity to animals was not a mere subject of talk or of legislation with him, but was a constantly actuating principle of his life. Of this I find a striking instance recorded in the Annual Register: — "Feb. 3d, 1807. As the Lord Chancellor was passing through Holborn on foot, he observed a number of men and boys hunting and beating on the head a little dog with sticks, under the idea of his being mad. The Ld. Chan., with great humanity, observing not the least symptom of

* I have no doubt that his rank, being joined with poverty and energy, materially assisted his progress. It gave him confidence, and made him more favourably listened to, both by judges and jurymen.

madness, rushed into the crowd, seized the poor animal from the hands of its destroyers, and carried it some distance, till he met a boy, whom he hired to carry it home with him, to his Lordship's house in Lincoln's Inn Fields; when he gave it into the care of a servant to be taken to his stables."— Not only was he kind to such attached favourites as "faithful Jack," the goose who followed him about his grounds, and Toss, so like a judge; but he ever took delight in protecting from ill-usage any living creatures, in watching their sports, and adding to their enjoyments.

His superstitious turn.

Although he sometimes talked with levity on sacred subjects, he had deep and sincere religious feelings, and he might be considered as inclining to superstition rather than to scepticism. He not only believed in the general moral government of God, but in particular interpositions of his power for the benefit of highly-favoured individuals. "At the famous State Trials, in 1794, he lost his voice on the evening before he was to address the jury. It returned to him just in time; and this, like other felicities of his career, he always ascribed to a special providence, with the habitually religious disposition of mind which was hereditary in the godly families that he sprung from." *

His interview with a ghost.

He either was, or pretended to be, a believer in *Second Sight* and *Ghosts*. Perhaps he worked himself up to the persuasion that he was sincere, in order that he might, with a good conscience, appear a very extraordinary man, and make people stare; but I suspect that he would occasionally, with deliberation, mystify his hearers. There being a round of ghost stories in a large company at the old Duchess of Gordon's, when it came to the turn of Erskine, then an Ex-Chancellor, he spoke as follows: "I also believe in *Second Sight*, because I have been its subject. When I was a very young man, I had been for some time absent from home. On the morning of my arrival in Edinburgh, as I was descending the steps of a *close*, on coming out from a bookseller's shop, I met our old family butler. He looked greatly changed,—pale, wan, and shadowy as a ghost. 'Eh, old boy,' I said, 'what brings you

* Lord Brougham.

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here?' He replied, 'To meet your Honour, and solicit your interference with my Lord, to receive a sum due to me, which the steward, at our last settlement, did not pay.' Struck by his look and manner, I bade him follow me to the bookseller's, and into whose shop I stepped back. But when I turned round to him, he had vanished. I remembered that his wife carried on some little trade in the Old Town; I remembered even the house and *flat* she occupied, which I had often visited in my boyhood. Having made it out, I found the old woman in widow's mourning. Her husband had been dead for some months, and had told her, on his death-bed, that my father's steward had wronged him of some money, but 'that when Master Tom returned, he would see her righted.' This I promised to do, and I shortly after fulfilled my promise. The impression was indelible; and I am extremely cautious how I deny the possibility of such 'supernatural visitings' as those which your Grace has just instanced in your own family."

His person.

Erskine's personal advantages have been already alluded to. His constitution was remarkably strong, and it was mentioned by himself in the House of Lords *, as a singular fact, that during the twenty-eight years of his practice at the Bar he had never for a single day been prevented from attending to his professional duties.

His two brothers.

Before coming to his descendants, I must briefly notice his two brothers, with whom he always kept up an affectionate intercourse during their respective lives. The Earl of Buchan, who spent half a century in increasing his income by saving, from 200*l.* to 2000*l.* a-year, might by his talents have made a considerable figure in the world, had it not been for his morbid vanity, which is said to have been more excessive than ever was seen in a human being. Having no children by his wife, he used often to observe, "According to Bacon, '*great men have no continuance*,' and in the present generation there are three examples of it, Frederick of Prussia, George Washington, and myself." — At the university of Leyden, while bearing the title of Lord Cardross, he had been a fellow

The Earl of Buchan.

Incredible vanity of this nobleman.

* Parl. Deb. vi. 247.

student with Lord Chatham, who afterwards kindly offered him the appointment of secretary of embassy at Lisbon; but he refused it because Sir James Gray, the ambassador, was only a baronet. To be sure, Dr. Johnson ignorantly and foolishly said, "Sir, had he gone secretary while his inferior was ambassador, he would have been a traitor to his rank and family." There can be no doubt that he acted most absurdly. He comforted himself for the rest of his days in talking of his ancestors, and corresponding with great people. — Observing to the Duchess of Gordon, "We inherit all our cleverness from our mother;" she answered, "I fear that, as is usually the case with the mother's fortune, it has all been settled on the younger children."

He still continued to write letters to Lord Chatham, and in one of these he curiously introduces the future Chancellor: — "A brother of mine is just arrived from our colonies of East and West Florida, and gives me but a very unfavourable account of the capabilities of those countries. He brought me likewise a curious account of a negro conqueror, who has subdued a great part of Africa, lying nearer our settlements, and has occasioned the building of our new fort on that coast. He carries eight Arabic secretaries, who record his feats in that language. My brother has also conversed with Commodore Byron's officers, and confirms the account of the Patagonian giants." * — Occupying, like his father, a "flat" in the old town of Edinburgh, he thought to place himself at the head of the literati there, but was baffled in an attempt to found a "Society of Antiquaries," — when he thus complained to a distant friend: — "I have been ungenerously requited by my countrymen for endeavouring to make them happier and more respectable. This is the common lot of men who have a spirit above that of the age and country in which they act, and I appeal to posterity for my vindication. I could have passed my time much more agreeably among Englishmen, whose character I preferred to

* The "Middy" seems to have considered himself "*licensed as a traveller*," and to have told as great wonders as of "the Anthropophagi, and men whose heads do grow beneath their shoulders."

that of my own countrymen,—in a charming country too, where my alliance with the noblest and best families in it, and my political sentiments, would have added much to my domestic as well as civil enjoyments; but I chose rather to forego my own happiness for the improvement of my native country, and expect hereafter that the children of those who have not known me, or received me as they ought to have done, will express their concern, and blush on account of the conduct of their parents. 'Præclarâ conscientiâ igitur sustentor, cùm cogito me de republicâ aut meruisse quum potuerim, aut certe nunquam nisi divinè cogitasse.'"

Soon after, he entirely abandoned the ungrateful city of Edinburgh, and concealed himself amid the shades of Dryburgh, where he had purchased an estate. On this occasion he published a general epistle in Latin, addressed to all the literati of the world. He afterwards thus apologised for not doing more to enlighten mankind:—"My insatiable thirst of knowledge, and a genius prone to splendid sciences and the fine arts, has distracted my attention so much that the candid must make ample allowances for me in any one department; but, considering myself as a nobleman and not a peer of Parliament,—a piece of ornamental china, as it were,—I have been obliged to avail myself of my situation to do as much good as I possibly could without acting in a professional line, which my rank and my fate excluded me from. A discarded courtier, with a little estate, does not find it easy to make his voice be heard in any country, and least of all in Scotland."—However, he contrived to persuade him whom he styled sometimes the "American Buchan," that he was really a great man, and sending him a snuff-box made from the oak which sheltered Wallace after the battle of Falkirk, received Washington's portrait in return, with the following acknowledgment: "I accept with sensibility and satisfaction the significant present of the box, which accompanied your Lordship's letter."

Lord Coke says, "a man has in him all his posterity;" and Lord Buchan thought that he had in himself all his ancestors, or that the whole line formed a corporation sole never visited by death. He always spoke, therefore, of their actions

as his own, and a stranger, not aware of this habit, was amazed once, although his Lordship did look very old, to hear him say at a dinner table, "I remonstrated strongly, before it took place, against the execution of Charles I."

Installation of the statue of Sir William Wallace.

An uncle of mine, a clergyman, who lived in the neighbourhood, once gave me a ludicrous account of the Earl's installation of a colossal statue to Sir William Wallace on the anniversary of the victory of Stirling Bridge, obtained in 1297. The following was the inscription on the base: "In the name of my brave and worthy country, I dedicate this monument, as sacred to the memory of Wallace, —

> "'The peerless Knight of Ellerslie,
> Who wooed on Ayr's romantic shore
> The beaming torch of liberty;
> And roaming round from sea to sea,
> From glade obscure, or gloomy rock,
> His bold compatriots called to free
> The realm from Edward's iron yoke.'"

A great curtain was drawn before the statue, which dropped at the discharge of a cannon; and then the Knight of Ellerslie was discovered with a great German tobacco pipe in his mouth, which some wicked wag had placed there, — to the unspeakable consternation of the Peer, and amusement of the company.

Nevertheless, he did some good by his patronage of letters. He encouraged the early efforts of Burns, Scott, and other men of genius, and he founded an annual prize in the University of Aberdeen, as an incentive to the study of the classics. It must be confessed, however, that the prize was of very minute intrinsic value, and operated only like the crowns of laurel and parsley distributed at the Olympic games.

Of all his poetical writings there are now extant only four lines, which he wrote with his own hand on the wall of St. Bernard's Well, in the neighbourhood of Edinburgh: —

> "O drink of me only; O drink of this well,
> And fly from vile whiskey, that lighter of hell.
> If you drink of me only — or drink of good ale —
> Long life will attend you — good spirits prevail."
> [*Quoth the Earl of Buchan.*]

He considered himself quite superior in genius to his younger brothers, and he was rather shocked that they had

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got on in the world by following a trade. — Yet at times he would boast of their elevation,—taking all the credit of it to himself. He said to an English nobleman who visited him at Dryburgh, "My brothers Harry and Tom are certainly extraordinary men; but they owe every thing to me." This observation occasioning an involuntary look of surprise in his guest, he continued, "Yes, it is true; they owe every thing to me. On my father's death, they pressed me for a small annual allowance. I knew that this would have been their ruin, by relaxing their industry. So, making a sacrifice of my inclination to gratify them, I refused to give them a farthing; and they have both thriven ever since,—*owing every thing to me.*"

Henry Erskine.

His great eminence and respectability.

While the head of the family made himself so ridiculous, Henry Erskine, the second brother, was universally beloved and respected. After studying at the Universities of St. Andrew's and Edinburgh, he was called to the Scotch Bar, and became its brightest ornament. Like Lord Loughborough, he first distinguished himself as a Ruling Elder in the debates of the General Assembly, then the best theatre for deliberative eloquence to be found in Scotland. He soon got into extensive practice, and he established a new æra in the history of the Parliament House. The old pleaders, reared at the Dutch Universities, were very learned, but confined themselves to heavy quotations from Craig, Vinius, and Voet. He, by no means deficient in professional learning, indulged in the boldest sallies of imagination; and his *seria commixta jocis*, while they delighted the Judges and the crowd who came to listen to him, in all sperate cases secured the judgment of the Court in favour of his clients. He had the fervid genius of the youngest brother without any of his eccentricities, and only required the same field for a display of his powers to have excelled him. Yet while, by the unanimous suffrages of the public, he found himself placed without a rival at the head of a commanding profession, his general deportment was characterised by the most unaffected modesty and easy affability; and his talents were not less at the service of indigent but deserving clients, than of those

whose wealth or influence enabled them most liberally to reward his exertions. Henry Erskine was in an eminent sense the "advocate of the people" throughout the long course of his professional career. It is said that a poor man, in a remote district of Scotland, thus answered an acquaintance who wished to dissuade him from engaging in a lawsuit with a wealthy neighbour, by representing the hopelessness of his being able to meet the expense of litigation: "Ye dinna ken what ye're saying, maister; there's no a puir man in a' Scotland need to want a friend, or fear an enemy, sae lang as Hairry Askin lives."

True to the Whig principles in which he was reared, he was in Opposition during nearly the whole of his life; but such was the habitual sweetness of his temper, and such the fascination of his manners, that in times when political animosities were carried to a lamentable height, no one was known to speak or to think of him with any thing approaching to personal hostility. By the choice of his brother advocates, he many years enjoyed the dignity of Dean of Faculty, and twice he tasted office under the Crown as Lord Advocate — first during the "Coalition Ministry" in 1783, and again under the "Talents," when Thomas was Chancellor. I remember then hearing him plead a cause at the bar of the House of Lords — all the Courts in Westminster Hall being deserted from a curiosity to compare the two brothers,—and full justice was done to the elder. He at that time represented Dumfries, but he never opened his mouth in the House of Commons; so that the often-debated question, how he was qualified to succeed there, remained unsolved. Though baffled in some of his pursuits, and disappointed of the honours to which his claim was universally admitted, he never allowed the slightest shade of discontent to rest upon his mind, nor the least drop of bitterness to mingle with his blood. On the approach of the infirmities of age, he retired to his beautiful villa of Amondell, in West Lothian. "Passing thus," says one who knew him well, "at once from all the bustle and excitement of public life to a scene of comparative inactivity, he never felt a moment of

ennui or dejection; but retained unimpaired till within a day or two of his death, not only all his intellectual activity and social affections, but, when not under the immediate infliction of a painful and incurable disease, all the gaiety of spirit and all that playful and kindly sympathy with innocent enjoyment which made him the idol of the young and the object of cordial attachment and unenvying admiration to his friends of all ages."

His jokes.

Such was his fame for wit, that, besides the genuine offspring of his own brain, most of the good things of the day, and many of days long gone by, were imputed to him.* A few have been sent to me, which may be relied upon as *genuine.* Having been speaking in the Outer House, at the bar of Lord Swinton, a very good but a very slow and deaf Judge, he was called away to the bar of Lord Braxfield (the well-known Justice Clerk Macqueen), who was Lord Ordinary for the week. On his coming up, Lord Braxfield said to him, "Well, Dean, what is this you've been talking so loudly about to my Lord Swinton?" "About a cask of whiskey, my Lord" (replied Harry); "but I found it no easy matter to make *it run in his Lordship's head.*"

Andrew Balfour, one of the commissaries of Edinburgh, was a man of much pomposity of manner, appearance, and expression. Harry met him one morning coming into the Court, and observing that he was lame, said to him, "What has happened, Commissary, I am sorry to see you limping?" "I was visiting my brother in Fife," answered the commissary, "and I fell over his stile, and had nearly broken my leg." "'Twas lucky, Commissary" (replied Harry), "it was not your *own stile*, for you would then have broken your neck."

His brother, the Earl of Buchan, who aimed at being a jester as well as a philosopher and a poet, one day, putting his head below the lock of the parlour door, exclaimed, "See, Harry, here's 'Locke on the Human Understanding;'" "Rather a poor edition, my Lord," replied Harry.

* For example, I well remember hearing, when a boy, that Harry Erskine, being told by a friend that "his coat was much too short," answered, "it will be *long enough* before I get another." To be found in Swift's "Polite Conversation."

Succeeding Dundas as Lord Advocate, that good-humoured politician offered to lend him his embroidered official gown, as he would not want it long. "No," said he in the same spirit, "I will not assume the *abandoned habits* of my predecessors."

These smart sayings were sometimes lost upon some of his countrymen — who at least required time to consider them. It is related that Lord Balmuto, sitting on the bench, would retain the most inflexible gravity, notwithstanding a mirth-moving jest from the Dean; and some hours after, when another cause was called, would suddenly grin and exclaim, "Oh! Mr. Erskine, I hae ye noo — I hae ye noo, very gude, very gude!"

Henry likewise displayed the family faculty for versifying — of which we have a specimen in the lines he improvised on reading Moore's translation of Anacreon: —

> "Oh! mourn not for Anacreon dead;
> Oh! weep not for Anacreon fled;
> The lyre still breathes he touch'd before,
> For we have one ANACREON MOORE."

Sir Walter Scott's estimate of the three brothers.

Sir Walter Scott, in his Diary, thus speaks of the three brothers: — "April 20. 1829. Lord Buchan is dead, a person whose immense vanity, bordering upon insanity, obscured or rather eclipsed very considerable talents. His imagination was so fertile that he seemed really to believe the extraordinary things which he delighted in telling. His economy, most laudable in the early part of his life, when it enabled him from a small income to pay his father's debts, became a miserable habit, and led him to do mean things. He had a desire to be a great man, and a Mecænas *à bon marché*. The two great lawyers, his brothers, were not more gifted by nature than I think he was; but the restraints of a profession kept the eccentricity of the family in order. Henry Erskine was the best-natured man I ever knew — thoroughly a gentleman — and with but one fault; he could not say '*No*,' and thus sometimes misled those who trusted him. Tom Erskine was positively mad. I have heard him tell a cock-and-a-bull story of having seen the ghost of his father's servant, John Barnett, with as much gravity as if he believed every word

he was saying. Both Henry and Thomas were saving men, yet both died very poor; the latter at one time possessed 200,000*l.*; the other had a considerable fortune. The Earl alone has died wealthy. It is saving, not getting, that is the mother of riches. They all had wit. The Earl's was crack-brained, and sometimes caustic. Henry's was of the very kindest, best-humoured, and gayest sort that ever cheered society; that of Lord Erskine moody and muddish. But I never saw him in his best days." Sir Walter himself was at this time in declining health, his spirits affected by the pecuniary difficulties in which he was involved, and his judgment still biassed by political animosity, which grew stronger as he approached the end of his career,—otherwise his kindly nature and exquisite relish for the beautiful and the good, wherever to be discerned, would have induced him to speak more warmly of the merits and more mercifully of the failings of LORD CHANCELLOR ERSKINE.*

Lord Erskine's descendants.

This extraordinary man, who will be a greater boast to his descendants than any Earl of Buchan or of Mar, or any royal progenitor,—by his first marriage had eight children. Frances, married to the Reverend Dr. Holland, Prebendary of Chichester; Mary, married to Edward Morris, Esq., the Master in Chancery; David Montague, the present lord, who has served his country as minister to the United States of America and at the Court of Wirtemburg; Thomas, a Judge of the Court of Common Pleas, one of the most upright and amiable of men; and Esmé Stewart, an officer in the army, who fought gallantly at Waterloo, and died from the consequences of a severe wound he received from a cannon shot near the end of the day, by the side of the Duke of Wellington.

Portraits and statues of him.

I must now reluctantly take leave of a task which I feel that I have inadequately performed—having attempted to describe

* Walter could even utter a bitter joke at the funeral of the old Earl.—"April 25th. Time to set out for Lord Buchan's funeral at Dryburgh. His Lordship's burial took place in a chapel amongst the ruins. His body was in the grave with its feet pointing westwards. My cousin Maxpopple was for taking notice of it; but I assured him 'that a man who had been wrong in the head all his life would scarce become right-headed after death.'" He concludes, however, with a touch of tenderness: "I felt something at parting with this old man, though but a trumpery body. He gave me the first approbation I ever obtained from a stranger."

the mental powers and intellectual achievements of Erskine. With his external lineaments posterity will be rendered familiar from the admirable representations of him which remain, by eminent painters and sculptors. The best portrait of him is by Hopner, in the royal gallery at Windsor; and there is an admirable bust of him in Holland House, by Nollekens, with the inscription —

"Nostræ eloquentiæ forensis facile princeps."

His statue in Lincoln's Inn Hall.

But the likeness of him which I regard with most delight is a statue by Westmacott in Lincoln's Inn Hall. This is the produce of a subscription eagerly made soon after his death by the members of that profession which he had so much adorned. The attitude is dignified and commanding, and although it was beyond the art of sculpture to convey any notion of that speaking eye which so much heightened the effect of the varying sentiments which proceeded from his lips, all the other features of his countenance are admirably portrayed, and still seem animated by the fervid genius which burned in the bosom of the original. I hope this statue may long exercise a salutary influence not only on the young student who enters the Hall in the course of the discipline prescribed to him to qualify him for the Bar, but on all successful practitioners who come here to plead before the Lord Chancellor. Let it constantly remind them of the noble objects of our profession, and impress upon them the important truth,— that its highest rewards may be obtained without the sacrifice of honour or consistency.

Moral.

END OF THE SIXTH VOLUME.

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